

BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
Commonwealth Edison Company,)
) No. 05-0597
Proposed general increase in)
rates for delivery service)
(tariffs filed on August 31,)
2005.).)

Chicago, Illinois
March 24th, 2006

Met pursuant to notice at 9:00 a.m.

BEFORE :

MR. GLENNON DOLAN and MS. KATINA HALOULOS,
Administrative Law Judges.

APPEARANCES:

MR. RICHARD G. BERNET
MS. ANASTASIA POLEK-O'BRIEN
10 South Dearborn Street, Suite 3500
Chicago, Illinois 60603
appearing for Com Ed;

MR. ROBERT KELTER
MS. JULIE SODERNA
MR. MELVILLE SODERNA
208 South LaSalle Street, Suite 1760
Chicago, Illinois 60604
appearing for CUB;

FOLEY & LARDNER
MR. E. GLENN RIPPIE
MR. JOHN RATNASWAMY
MS. CYNTHIA FONNER
321 North Clark Street, Suite 2800
Chicago, Illinois 60610
appearing for Com Ed;

1 APPEARANCES (Cont'd):

2 MR. ALLAN GOLDENBERG
MS. MARIE SPICUZZA
3 Assistant State's Attorney
69 West Washington, Suite 3130
4 Chicago, Illinois 60602
appearing for Cook County State's
5 Attorney's Office;

6 GIORDANO and NEELAND
MR. PATRICK GIORDANO
7 MR. PAUL NEELAND
MS. CHRISTINA PUSEMP
8 360 North Michigan Avenue
Chicago, Illinois 60601
9 appearing for Building Owners and
Managers Association of Chicago;

10 MS. CARLA SCARSELLA
11 MR. JOHN FEELEY
MR. CARMEN FOSCO
12 MR. SEAN BRADY
160 North LaSalle Street, Suite C-800
13 Chicago, Illinois 60601
appearing for Staff;

14 DLA PIPER RUDNICK GRAY CARY US LLP
15 MR. CHRISTOPHER J. TOWNSEND
MR. WILLIAM A. BORDERS
16 203 North LaSalle Street, Suite 1900
Chicago, Illinois 60601
17 appearing for Coalition of Energy
Suppliers;

18 MR. JAMES S. MITHCELL
19 547 West Jackson Boulevard
Chicago, Illinois 60661
20 appearing for Metra;

21
22

1 APPEARANCES (Cont'd):

2 HINSHAW & CULBERTSON
MR. EDWARD R. GOWER
3 400 South Ninth, Suite 300
Springfield, Illinois 62701
4 appearing for Metra;

5 MR. BARRY HUDDLESTON
1000 Louisiana Street, Suite 5800
6 Houston, Texas 77002
appearing for Dynegy, Inc.;

7
LEUDERS, ROBERTSON & KONZEN
8 MR. ERIC ROBERTSON
PO Box 735
9 Granite City, Illinois 62040
appearing for IIEC;

10
MR. CONRAD E. REDDICK
11 1015 Crest Street
Wheaton, Illinois 60187
12 appearing for IIEC;

13 SONNENSCHNEN, NATH and ROSENTHAL
MR. JOHN ROONEY
14 MR. MICHAEL GUERRA
233 South Wacker Drive, Suite 7800
15 Chicago, Illinois 60606
appearing for Com Ed;

16
MR. RICHARD C. BALOUGH
17 53 West Jackson Boulevard, Suite 956
Chicago, Illinois
18 appearing for CTA;

19 MS. ELLEN PARTRIDGE
567 West Lake Street
20 Chicago, Illinois
appearing for CTA;

21
22

1 APPEARANCES (Cont'd):

2 MR. LAWRENCE A. GOLLOMP
3 1000 Independence Avenue, SW
4 Washington, DC 20585
5 appearing for U.S. Department of Energy;

6 MR. RONALD JOLLY
7 MR. J. MARK POWELL
8 30 North LaSalle Street, Suite 900
9 Chicago, Illinois 60602
10 appearing for the City of Chicago;

11 MR. MARK KAMINSKI
12 MR. RISHI GARG
13 100 West Randolph Street
14 Chicago, Illinois 60601
15 appearing for People of the State of
16 Illinois;

17 MR. DARRYL BRADFORD
18 One Financial Plaza
19 440 South LaSalle Street, Suite 3300
20 Chicago, Illinois 60605
21 appearing for Com Ed.

22 SULLIVAN REPORTING COMPANY, by
Barbara A. Perkovich, CSR

1		<u>I</u>	<u>N</u>	<u>D</u>	<u>E</u>	<u>X</u>			
2	<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-</u>	<u>Re-</u>	<u>By</u>			
3				<u>direct</u>	<u>cross</u>	<u>Examiner</u>			
4	STEVEN RUBACK	1182	1187	1205	1207				
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1			
2			
3	DOE		
4	#1.0, 1.1, 1.2		1182
	1.3		1182
5	CUB		
	#3.0 & 6.0		1186
6	#1.0 & 4.0		1210
	ICC STAFF		
7	#8	1215	1222
	CTA CROSS		
8	#1		1419
	#1.0, 2.0, 3.0		1419
9	#3.01-3.07, & 3.0 (revised)		1419
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1 JUDGE DOLAN: By the direction and authority of
2 the Illinois Commerce Commission, I call Docket
3 No. 05-0597, Commonwealth Edison Company, proposed
4 general revisions in electric rates, general
5 restructuring of rates, price unbundling of bundled
6 service rates and revisions of other terms and
7 conditions of service to order.

8 Would the parties please identify
9 themselves for the record.

10 MS. POLEK-O'BRIEN: Darryl Bradford, Anastasia
11 Polek-O'Brien for Commonwealth Edison Company. Dale
12 Thomas of the law firm of Sidley and Austin and
13 Glen Rippie and Cynthia Fonner of the law firm of
14 Foley and Lardner, John Rooney and Mike Guerra of
15 the law firm of Sonnenschein, Nath and Rosenthal.

16 MR. FEELEY: John Feeley, Carmen Fosco, Carla
17 Scarsella and Sean Brady, representing staff of the
18 Illinois Commerce Commission.

19 MR. GOLLOMP: Lawrence Gollomp appearing for the
20 United States Department of Energy, 1000
21 Independence Avenue, Washington, DC.

22 MS. SODERNA: Julie Soderna, Robert Kelter and

1 Melville Nickerson representing the Citizens
2 Utility Board, 208 South LaSalle Suite 1760
3 Chicago, Illinois 60604.

4 MR. KAMINSKI: Mark Kaminski and Rishi Garg of
5 the Illinois Attorney General's Office, 100 West
6 Randolph Street, Chicago, Illinois 60601 on behalf
7 of People of the State of Illinois.

8 MR. GOLDENBERG: Alan Goldenberg and Marie D.
9 Spicuzza Assistant State's Attorneys on behalf of
10 the the Cook County State's Attorney's office, 69
11 West Washington, Suite 3130, Chicago,
12 Illinois 60602.

13 MR. POWELL: On behalf of the City of Chicago,
14 Ronald D. Jolly and J. Mark Powell, 30 North
15 LaSalle, Suite 900, Chicago, Illinois 60602.

16 MR. BORDERS: On behalf of the Coalition of
17 Energy Suppliers, William Borders and Christopher
18 Townsend, DLA Piper Rudnick, Gray and Cary, 203
19 North LaSalle, Chicago, Illinois 60601.

20 MR. ROBERTSON: Eric Robertson, Conrad Reddick.
21 Eric Robertson with Leuders, Robertson and Konzen
22 on behalf of the Illinois Industrial Energy

1 Consumers.

2 JUDGE DOLAN: All right. Let the record reflect
3 that there are no other appearances. Mr. Gollomp,
4 I believe we are going to start with you this
5 morning.

6 MR. GOLLOMP: Yes, U.S. Department of Energy
7 Witness Dr. Gale Swan was scheduled for cross
8 examination today. The other parties have waived
9 his appearance and cross examination. Accordingly
10 I request that I have the opportunity to move into
11 evidence his testimony and exhibits. They are DOE
12 Exhibit 1.0, 1.1, 1.2 and 1.3. I will file at a
13 later date with the secretary an affidavit and
14 place it on e-docket.

15 JUDGE DOLAN: Any objection?

16 MS. POLEK-O'BRIEN: No objection.

17 MS. SODERNA: No objection.

18 JUDGE DOLAN: All right, DOE Exhibit 1.0 will be
19 admitted into evidence. DOE Exhibit 1.1 will be
20 admitted into evidence. DOE Exhibit 1.2 and DOE
21 Exhibit 1.3 will be admitted into evidence.

22

1 (Whereupon, DOE
2 Exhibits Nos. 1.0, 1.1, 1.2, 1.3
3 were admitted into evidence as
4 marked on e-docket of this date.)

5 MR. GOLLOMP: Thank you, your Honor.

6 MS. SODERNA: Citizens Utility Board calls Steven
7 Ruback.

8 (Witness sworn.)

9 JUDGE DOLAN: Ms. Soderna, do you want to
10 introduce his testimony?

11 MS. SODERNA: Yes.

12 STEVEN RUBACK,
13 called as a witness herein, having been first duly
14 sworn, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY

17 MS. SODERNA:

18 Q. Please state your full name and business
19 address for the record.

20 A. My name is Steven W. Ruback, R-u-b-a-c-k,
21 I'm a principle with the Columbia Group, 785
22 Washington Street, Canton, Massachusetts.

1 **Q.** Did you prepare a written testimony for
2 this proceeding?

3 **A.** Yes, I did.

4 **Q.** Do you have before you what has been marked
5 as CUB Exhibit 3.0 for identification?

6 **A.** Yes, I do.

7 **Q.** This document is entitled, the Direct
8 Testimony of Steven W. Ruback?

9 **A.** Yes.

10 **Q.** Does this document consist of 32 pages of
11 questions and answers?

12 **A.** Yes.

13 **Q.** And attached to this document are four
14 exhibits numbered 3.01, 3.02, 3.03 and 3.04?

15 **A.** Yes.

16 **Q.** Did you prepare these documents for this
17 proceeding?

18 **A.** Yes. Or they were prepared under my
19 supervision.

20 **Q.** Is it your understanding that these
21 documents were filed by CUB on e-docket on
22 December 22nd, 2005?

1 **A.** That's my understanding, yes.

2 **Q.** Do you have any changes or corrections to

3 your direct testimony or attachments?

4 **A.** No.

5 **Q.** If I ask you the same questions set forth

6 in your direct testimony today, would your answers

7 be the same?

8 **A.** Yes, they would.

9 **Q.** And do you also have before you what has

10 been marked as CUB Exhibit 4.0 for identification?

11 **A.** Yes, I have.

12 **Q.** And this document is entitled Rebuttal

13 Testimony of Steven W. Ruback?

14 **A.** Yes.

15 **Q.** Does this document consist of 9 pages of

16 questions and answers?

17 **A.** Yes.

18 **Q.** And attached to this document is one

19 exhibit, number 6.01?

20 **A.** Yes.

21 **Q.** Did you prepare these documents for this

22 proceeding?

1 **A.** Yes. Or they were prepared under my
2 supervision.

3 **Q.** Is it your understanding that these
4 documents were filed by CUB on e-docket on February
5 27th, 2006?

6 **A.** Yes.

7 **Q.** Do you have any changes or corrections to
8 your rebuttal testimony or attachment?

9 **A.** No.

10 **Q.** If I were to ask you the questions set
11 forth in your rebuttal testimony today would your
12 answers be the same?

13 **A.** Yes, they would.

14 **Q.** Is any of the information contained in any
15 of the exhibits identified today confidential or
16 proprietary?

17 **A.** Not to the best of my understanding.

18 MS. SODERNA: I would like to move for the
19 admission of CUB Exhibits 3.0, 3.01, 3.02, 3.03,
20 3.04, 6.0 and 6.01 and tender my witness for cross
21 examination.

22 JUDGE DOLAN: Any objections?

1 MR. THOMAS: No objection.

2 JUDGE DOLAN: Okay. CUB Exhibit 3.0, 3.01, 3.02,
3 3.03, and 3.04 will be admitted into the record and
4 CUB Exhibit 6.0 and 6.01 will also be admitted into
5 the record.

6 (Whereupon, CUB
7 Exhibits Nos. 3.0 and 6.0 were
8 admitted into evidence as
9 previously marked on e-docket
10 of this date.)

11 JUDGE DOLAN: Let's go off the record for one
12 second.

13 (Discussion off the record.)

14 MS. SODERNA: I'm sorry, your Honor, I just
15 wanted to clarify for the record that the
16 testimony, although it was initially filed on
17 behalf of the Citizens Utility Board and the Cook
18 County State's Attorney's Office, the City of
19 Chicago also joined on, I think at the end of
20 January. So all three organizations are sponsoring
21 Mr. Ruback's testimony.

22 JUDGE DOLAN: Okay, so it's the CCC, CUB?

1 MS. SODERNA: Right.

2 JUDGE DOLAN: Thank you. Proceed.

3 CROSS EXAMINATION

4 BY

5 MR. THOMAS:

6 Q. Mr. Ruback, my name is Dale Thomas and I'll
7 be cross examining you today on behalf of Com Ed.
8 I apologize from the outset, but I woke up with a
9 cold this morning so if I croak a little, hopefully
10 you'll understand my questions.

11 A. I hope you feel better.

12 Q. I understand from what just happened that
13 you're testifying on behalf of all three entities,
14 correct?

15 A. Yes.

16 Q. CUB, the State's Attorney's Office and the
17 City of Chicago. And your direct testimony says
18 that you're a principal of a public interest
19 consulting firm; is that correct?

20 A. Yes.

21 Q. And you point out that that firm testifies
22 only on behalf of state agencies or offices of

1 attorney general's or various public interest
2 groups.

3 **A.** And local governments and municipal
4 utilities.

5 **Q.** But you never testify on behalf of large
6 industrial customers or utilities, correct?

7 **A.** I have testified on behalf of municipally
8 owned utilities.

9 **Q.** But not industrial owned utilities?

10 **A.** Right. But not industrial.

11 **Q.** And you are a lawyer and an engineer,
12 correct?

13 **A.** Yes.

14 **Q.** But you are not testifying here as a
15 lawyer?

16 **A.** No.

17 **Q.** At the outset let me clarify one thing. In
18 your direct testimony, you testify that Com Ed
19 Exhibit 10.9 demonstrates that about 76 percent of
20 the total proposed distribution revenue requirement
21 constitutes revenue from kilowatt hour charted.

22 But after reviewing Mr. Heintz' rebuttal

1 testimony, do you agree that in fact revenue from
2 per kilowatt hour charges is less than 33 percent
3 of the revenue requirement?

4 **A.** Yes, I think that was in my rebuttal
5 testimony.

6 **Q.** Now, in this case you were asked to review
7 and evaluate Com Ed's proposed rate design to
8 provide comments and alternative recommendations?

9 **A.** Right.

10 **Q.** And you make findings and recommendations
11 under two main subject areas. Com Ed's embedded
12 cost of service, on the one hand and class revenue
13 requirements on the other, correct?

14 **A.** And included in the class revenue
15 requirements are not only the results of the
16 treatment of distribution demand costs, but also
17 the treatment of relative risk differentials.

18 **Q.** Correct and we'll get into that. Let's see
19 if we can agree on some basics before we get to
20 these matters. The rate design process, at a high
21 level, sets the rates to recover the proportion of
22 the revenue requirement that is allocated in each

1 customer class, correct?

2 **A.** Yes. The class revenue requirements must
3 total the allowed revenue requirements for the
4 utility as a whole.

5 **Q.** Right. And by classes of customers, we
6 mean groups of customers who have certain common
7 cost characteristics and generally take service
8 under the same tariff, correct?

9 **A.** Yes, they can be rate signals or they can
10 be customer classes, such as residential,
11 commercial and industrial.

12 **Q.** And indeed Com Ed, in this case, has
13 proposed customer classes that contained
14 residential, large commercial and industrial
15 customers and small commercial industrial
16 customers?

17 **A.** Yes.

18 **Q.** With that background, let's get to Com Ed's
19 embedded cost study. Now, Com Ed has proposed an
20 embedded cost study to determine the proportion of
21 the overall revenue requirement that will be paid
22 by each class, correct?

1 **A.** Yes.

2 **Q.** And by embedded cost study, we mean we're

3 talking about actual historical costs at some

4 particular point in time in the past, correct?

5 **A.** Yes, historical.

6 **Q.** And the embedded cost study method used by

7 Com Ed uses the non-coincident peak method for

8 allocating certain distribution costs, correct?

9 **A.** Yes, distribution demand costs.

10 **Q.** And the theory behind this method, crudely

11 speaking, and I stress crudely, is that the portion

12 of the system running from a transformer to the

13 customer premises is assumed to be built in size to

14 serve the peak load of the customer class served on

15 that system; is that correct?

16 **A.** Yes. Distribution systems have to be built

17 to serve the non-coincident demands of the

18 geographic areas they serve. And that's why they

19 are allocated on non-coincident demands as opposed

20 to coincident demands.

21 **Q.** And it's precisely because the peaks of

22 those customer classes may occur at times other

1 than the peak of the entire system that they are
2 called non-coincident peaks?

3 **A.** That's why they're called non-coincident
4 peaks.

5 **Q.** And as far as what I'll roughly call the
6 transmission portion of the jurisdictional network,
7 which is beyond the transformers, the theory is
8 that that portion of the system is built in size to
9 meet the system peak, correct?

10 **A.** Well, yes, it gets a bit touchy here
11 depending on how you classify transmission and
12 distribution. But to the extent that transmission
13 provides a power supply function, you are correct.

14 **Q.** And the method that is used in an embedded
15 cost study for that portion of the jurisdictional
16 network is the coincident peak?

17 **A.** Yes.

18 **Q.** So now Com Ed's position is that the use of
19 these two factors, the coincident peak and
20 non-coincident peak demands in the embedded cost
21 study is appropriate to allocate distribution
22 demand costs among the classes for rate design

1 purposes, correct?

2 **A.** That's what the embedded cost study does.

3 **Q.** And you recommend that the Commission
4 should allocate distribution demand costs based not
5 only on the coincident and non-coincident peaks,
6 but also on average demand of the customer classes;
7 is that correct?

8 **A.** Yes. Rates have to be based on cost of
9 service, non-cost criteria, fairness in equity are
10 non-cost criteria. I recommend that in order to
11 consider fairness in equity, that the Commission
12 consider an average utilization of the system and
13 set in class revenue requirements.

14 **Q.** And the use of that kind of average demand
15 in an allocation method is often called the peak
16 and average method, correct?

17 **A.** Yes.

18 **Q.** In your testimony you characterize the
19 Company's rate design proposals, based upon
20 coincident peak and non-coincident peaks in the
21 embedded cost study as, quote, controversial,
22 unquote, correct?

1 **A.** Yes, there may be some confusion about
2 that.

3 **Q.** That is the word you use, I believe?

4 **A.** Of course.

5 **Q.** Now, you admit that you're not basing your
6 opinion about controversial on any analysis or
7 survey of any utility rate design proposals in
8 Illinois or other states, correct?

9 **A.** I'm basing my opinion of controversial,
10 based on --

11 **Q.** Excuse me, sir, but if you could answer the
12 question, if you want to add something after --

13 MS. SODERNA: Can we have a citation to where
14 that's stated in the testimony?

15 MR. THOMAS: In fact, it was a data request
16 response.

17 MS. SODERNA: Can you provide that to us?

18 BY MR. THOMAS:

19 **Q.** Does that refresh your recollection,
20 Mr. Ruback?

21 **A.** Yes.

22 **Q.** And so the answer to the question, you did

1 not base your opinion about controversial on any
2 analysis or survey of any utility rate design
3 proposals in Illinois or other states, correct?

4 **A.** Well, it's my understanding that in
5 Illinois, like other states, rates are based on
6 cost of service and non-cost of service criteria.
7 The Company's proposal set the class rates of
8 return at an equal of system average rate of return
9 is controversial based upon my understanding of
10 Illinois law and my general experience in rate
11 design matters, but was not the product of a
12 specific analysis or study.

13 MR. THOMAS: If the hearing examiners please, I
14 believe yesterday when answers were given that
15 amounted to a speech, and at the end there was
16 something that sort of approached an answer to the
17 question, you struck the earlier part and I ask
18 that be done.

19 I mean, I'm happy to show you the
20 response to the data request, but the statement is
21 made here, that statement, being his statement, is
22 not based on any analysis or survey of any utility

1 rate design proposals. That's exactly what I
2 asked.

3 JUDGE HALOULOS: If you could just answer the
4 question directly and that portion of your answer
5 that was not a yes or no will be stricken from the
6 record.

7 THE WITNESS: Not a formal analysis, yes.

8 BY MR. THOMAS:

9 Q. And in your testimony you did not site a
10 single state regulatory commission that uses the
11 peak and average method that you advocate for
12 electric utility delivery services rate design,
13 isn't that correct?

14 A. That's correct, this is a new issue.

15 Q. And you also admit that the non-coincident
16 peak allocation method used by Com Ed is consistent
17 with the National Association of Regulatory
18 Commissioners 1992 Electric Utility Cost Allocation
19 Manual, correct?

20 A. That's in my direct testimony.

21 Q. And moreover, the Commission previously
22 approved the same embedded cost of service

1 methodology used by Com Ed here in Com Ed's two
2 previous delivery services rate case, Dockets
3 99-0117 and 01-0423; isn't that correct?

4 **A.** Yes, but there are changed circumstances.

5 **Q.** And therefore, your recommended methodology
6 differs from that approved by the Illinois Commerce
7 Commission for use by Com Ed in those past due
8 delivery service rate cases?

9 **A.** Yes.

10 **Q.** Now, further, Commission staff has not
11 proposed any changes in Com Ed's embedded cost of
12 service study in this proceeding; isn't that
13 correct?

14 **A.** That's my understanding.

15 **Q.** In addition, in the last 5 years, the
16 Commission has approved use by the Ameren Electric
17 Companies of substantially the same non-coincident
18 peak methodology that is in Com Ed's embedded cost
19 of survey study; isn't that correct?

20 **A.** I don't know the answer to that question,
21 sir.

22 **Q.** So that in preparing your testimony for

1 this proceeding, you didn't determine whether or
2 not that same non-coincident peak methodology was
3 used and approved in this state for Ameren
4 companies, correct?

5 **A.** I looked at one of Com Ed's previous
6 decisions and I concluded there were changed
7 circumstances in this post restructuring or end of
8 the mandatory transition period and that was the
9 reason for my recommendation, along with my direct
10 testimony.

11 **Q.** Well, would you accept, subject to check,
12 that in fact the Ameren companies used a
13 non-coincident peak embedded cost methodology and
14 that was approved by this Commission in several
15 cases since the year 2000?

16 **A.** Yes, but I don't know if they were both
17 restructuring.

18 **Q.** Well, would you accept, subject to check --
19 MS. SODERNA: I have to object. This is beyond
20 the scope of his testimony.

21 MR. THOMAS: Well, all I'm exploring is what he
22 didn't take account of. I can, if counsel wants,

1 show you some of those opinions, but I just --

2 MS. SODERNA: Well, he's testified to what he did
3 examine, whether it's analyses or whether it's
4 based on his experience.

5 JUDGE HALOULOS: Sustained.

6 BY MR. THOMAS:

7 Q. Now, I believe you just suggested and
8 certainly you suggest in your testimony, that this
9 is a case of first impression for the Commission.
10 And I think in your testimony you said because only
11 the distribution of customer function are included
12 in the cost of service study; is that correct?

13 A. Yes, involving the residential class and
14 the post restructuring period.

15 Q. But the fact is that the two previous cases
16 in which the Commission approved the coincident
17 peak and non-coincident peak methodology used by
18 Com Ed here, were distribution service tariff rate
19 cases, correct?

20 A. Yes, but they didn't involve the
21 residential class and they were not post
22 restructuring.

1 **Q.** And this proceeding is a distribution
2 tariff rate case, correct?

3 **A.** Yes, post restructuring.

4 **Q.** And when you say they didn't involve the
5 residential class, there were distribution service
6 tariffs established for residential customers who
7 might go to a competitive carrier or a competitive
8 supplier?

9 **A.** There may have been, but it's my
10 understanding there was no service under those
11 tariffs.

12 **Q.** You have not testified, have you,
13 Mr. Ruback, that the way in which Com Ed plans for
14 and constructs its delivery service network is any
15 different now than it was then?

16 **A.** You'll repeat that a bit slower, please?

17 **Q.** You have not testified, have you that the
18 way in which Com Ed plans for and constructs its
19 delivery service network is different now than it
20 was then?

21 **A.** No, it's not.

22 **Q.** Now you also suggest your proposed

1 methodology would be more fair; is that correct?

2 **A.** Yes, I think fairness belongs in rate
3 design and I think consideration of annual
4 utilization of the distribution system is fair.

5 **Q.** And you're testifying here on behalf of
6 CUB, the State's Attorney's Office and the City of
7 Chicago, who see themselves as representing
8 residential customers in this proceeding, correct?

9 **A.** Correct.

10 **Q.** Mr. Ruback, do you agree that the effect of
11 your recommended cost allocation methodology would
12 to shift distribution related costs away from the
13 residential class?

14 **A.** Yes.

15 **Q.** Have you read the testimony of Mr. Chalfant
16 in this case?

17 **A.** Yes I have.

18 **Q.** And he is testifying on behalf of
19 industrial customers, is he not?

20 **A.** Yes, he is.

21 **Q.** And would you agree that the cost
22 allocation methodology that he supports, which

1 reflects the use of a concept of a minimum
2 distribution system, would shift costs toward a
3 residential class and away from industrial
4 customers?

5 **A.** Yes, and appropriately so.

6 **Q.** So that the embedded cost of service
7 methodology used by Com Ed here arrives at a
8 distribution of costs for customers classes
9 somewhere between your recommended methodology and
10 Mr. Chalfant's methodology, correct?

11 **A.** No, I think Mr. Chalfant's methodology is
12 inappropriate and incorrect.

13 **Q.** That was not my question. My question is
14 you've already agreed that both -- each respective
15 study shifts costs away from the groups you're
16 representing. My only point is that Com Ed
17 methodology has a result somewhere in between those
18 two methodologies; isn't that correct?

19 **A.** Arithmetically, but the industrial method
20 is not appropriate and the method that I'm
21 recommending post restructuring is appropriate.

22 **Q.** Let's turn to your other main

1 recommendation, class revenue requirements. Now
2 Com Ed has proposed setting the distribution
3 interclass revenue requirement based upon equal
4 class rates of return for proposed rates, correct?

5 **A.** Yes.

6 **Q.** And your position is equal class rates of
7 return are not an appropriate basis to set retail
8 distribution rates for a monopoly service, correct?

9 **A.** Yes.

10 **Q.** And thus you recommend establishing a lower
11 target rate of return for residential and
12 governmental customers by recognizing class risk
13 differentials; isn't that correct?

14 **A.** Yes.

15 **Q.** And in fact, you recommend that the
16 commission set the residential index rate of return
17 at 97.5 percent of the system average; isn't that
18 correct?

19 **A.** Yes, and I testified that was judgmental.
20 And if the Commission accepted my class risk
21 differential argument, that the Commission has
22 discretion to exercise its own judgment and set a

1 different target rate of return for the purpose of
2 calculating class revenue requirements.

3 **Q.** That's right. You did not identify in your
4 testimony any study or analysis which quantified
5 what you claim, that the lower risk differential
6 level for the residential class?

7 **A.** You cannot, it's a matter of fairness. You
8 can't take fairness and quantify it.

9 **Q.** In fact, in your rebuttal testimony you
10 state that, quote, industry analysts have been
11 unable to quantify class risk differentials; isn't
12 that correct?

13 **A.** That's because it's a non-cost criteria.

14 **Q.** And in your filed written testimony you
15 also do not cite to any state regulatory commission
16 that's accepted and used your estimate of a
17 residential class risk differential in setting
18 class revenue allocations for electric utilities,
19 correct?

20 **A.** I have testified in two cases in Georgia
21 involving Georgia Power and Savannah Electric
22 Company, both those included a class risk

1 differential issue, both cases were settled.

2 Q. So the answer to my question is, yes, you
3 do not cite to any state regulatory commission that
4 has accepted and used your class risk differential
5 in setting class revenue allocations for electric
6 utility?

7 A. I don't know what the considerations were
8 in the settlements.

9 Q. That's not what I asked. I asked whether
10 anywhere in your testimony.

11 A. Now I understand. The answer is yes, there
12 are no sites in my testimony.

13 MR. THOMAS: I have no further questions.

14 JUDGE DOLAN: Mr. Robertson, are you ready?

15 MR. ROBERTSON: I have no cross.

16 JUDGE DOLAN: Any redirect?

17 MS. SODERNA: Can I just have one second.

18 REDIRECT EXAMINATION

19 BY

20 MS. SODERNA:

21 Q. Mr. Ruback, Mr. Thomas asked you about your
22 familiarity with other Illinois utility cases in

1 which peak average methodology was adopted. Are
2 you aware of any utilities, other than electric,
3 that have adopted -- where the Commission has
4 adopted peak and average methodology?

5 **A.** Yes, and I think this is important. The
6 Commission has adopted a peak and average
7 methodology in gas cases. Post restructuring, Com
8 Ed is going to look like a gas company, that is an
9 LDC distributes gas or energy to its customers.
10 Com Ed will distribution only, only distribute
11 energy to it customers. If the peak and average
12 method is fair for gas utilities, it should be fair
13 for electric utilities also.

14 **Q.** And are there any changed circumstances in
15 this case, changed in reference to the prior two
16 DST cases that would warrant the Commission taking
17 a different look at rate design?

18 **A.** As I've testified, there are two. One is
19 these rates will be effective post restructuring
20 and two, these rates will apply to the residential
21 class and will be used.

22 MS. SODERNA: Thank you, no further redirect.

1 MR. THOMAS: I have some recross.

2 RECROSS EXAMINATION

3 BY

4 MR. THOMAS:

5 Q. Mr. Ruback, on redirect you talked about
6 the fact that the gas cases have used a peak and
7 average method, correct?

8 A. Yes.

9 Q. And in fact, the Commission has approved a
10 peak and average method for gas utilities since at
11 least 1995; isn't that correct?

12 A. For the distribution function, that's my
13 understanding.

14 Q. But as we've seen, there have been numerous
15 electric delivery services rate cases since 1995;
16 isn't that true?

17 A. I assume so.

18 Q. And the Commission has not adopted the peak
19 and average method in any one of those electric
20 delivery services rate cases; isn't that true?

21 A. Yes, but there are changed circumstances
22 here, as I explained in my redirect. Com Ed is now

1 an electric distribution only company. And the gas
2 utilities only provide distribution only services.
3 Until Com Ed becomes a distribution only utility,
4 the Commission may have been right in the past, but
5 once it becomes a distribution only utility, the
6 peak and average should apply.

7 MR. THOMAS: I have no further questions.

8 JUDGE DOLAN: Thank you. Any other questions?

9 MS. SODERNA: No.

10 JUDGE DOLAN: All right, thank you, Mr. Ruback.

11 (Witness excused.)

12 JUDGE DOLAN: Looks like next we have Mr. Bodmer.

13 MR. JOLLY: The Citizens Utility Board, the Cook
14 County State's Attorneys Office and the City of
15 Chicago called Mr. Bodmer.

16 (Witness sworn.)

17 MR. JOLLY: As I understand, we are doing the
18 streamlined?

19 JUDGE DOLAN: Yes.

20 MR. JOLLY: Mr. Bodmer has prepared two documents
21 for submission in this proceeding. He presented
22 his direct testimony which is CUB/CCSAO/City of

1 Chicago Exhibit 1.0. There have been two errata's
2 submitted with respect to that testimony.

3 The first was submitted on March 15th
4 and the second was submitted yesterday. I have put
5 copies of the second errata on the chair there. I
6 think there were copies delivered to the ALJ's, do
7 you have that?

8 JUDGE DOLAN: Yes, we did get those.

9 MR. JOLLY: And attached to his direct testimony,
10 Exhibit 1.0 are five exhibits, 1.01, through 1.05.
11 And then in addition Mr. Bodmer prepared rebuttal
12 testimony that has been identified as
13 CUB/CCSAO/City of Chicago Exhibit 4.0 and there was
14 an errata submitted with that on March 15th, 2006.

15 They are both -- there is one exhibit
16 attached to that piece of testimony. The rebuttal
17 testimony, the testimony itself contains some
18 confidential information. So there is both a
19 public and a confidential version.

20 JUDGE DOLAN: Of 4.0?

21 MR. JOLLY: Of 4.0.

22 JUDGE DOLAN: And then 4.01 is public?

1 MR. JOLLY: It's public. And I would move for
2 the admission of CUB/CCSAO/City Exhibit 1.0 and
3 then 1.01 through 1.05, and CUB/CCSAO/City
4 Exhibit 4.0 and 4.01 and tender Mr. Bodmer for
5 cross examination.

6 JUDGE DOLAN: Any objections?

7 MR. RIPPIE: No, your Honor.

8 JUDGE DOLAN: Then CUB Exhibit 1.0 will be
9 admitted into the record, CUB -- I should say CUB
10 Cook County and City 1.0 will be admitted in the
11 record, CUB, Cook County and City 1.01, 1.02, 1.03,
12 1.04, 1.05 will be admitted into evidence. CUB,
13 Cook County and City 4.0 public will be admitted
14 into the record. CUB Cook County and City of
15 Chicago 4.0 confidential will be admitted into the
16 record and CUB Cook County and City of Chicago 4.01
17 will be admitted into the record.

18 (Whereupon, CUB/CCSAO/City of
19 Chicago Exhibits Nos. 1.0 and 4.0
20 were admitted into evidence as
21 previously marked on e-docket
22 of this date.)

1 JUDGE DOLAN: Counsels, are we planning on going
2 over any of the confidential information contained
3 in his testimony?

4 MR. FOSCO: Staff doesn't.

5 MR. RIPPIE: I don't think so.

6 JUDGE DOLAN: Okay. Well, if we run into that,
7 please let us know. All right, proceed.

8 EDWARD BODMER,
9 called as a witness herein, having been first duly
10 sworn, was examined and testified as follows:

11 CROSS EXAMINATION

12 BY

13 MR. FEELEY:

14 Q. I'll go first. Good morning, Mr. Bodmer,
15 my name is John Feeley and I represent staff. I
16 have a few short questions for you and then
17 Mr. Fosco who also represents staff has some
18 questions for you.

19 If I could direct your attention to your
20 Exhibit 4.0, Page 33, Line 1023 through 1025.

21 A. Yes, I see that.

22 Q. On those lines, you refer to forward

1 dividend pay out ratios, correct.

2 **A.** Yes.

3 **Q.** Is it true that the source of the data for
4 those forward dividend payout ratios is the Yahoo
5 finance website?

6 **A.** Yes, it is.

7 **Q.** And those forward dividend payout ratios
8 are computed from the forward one-year dividend per
9 share divided by the forward one-year earnings per
10 share, each from the Yahoo finance website?

11 **A.** That's correct.

12 **Q.** And regarding the Yahoo finance forward
13 one-year earnings per share estimate that you used
14 in your analysis, does each Yahoo finance forward
15 one-year earnings per share estimate represent the
16 average of multiple analysts estimates?

17 **A.** I believe it does, yes.

18 **Q.** It does?

19 **A.** Yes.

20 MR. FEELEY: That's all I have, now Mr. Fosco has
21 some questions for you. Thank you.

22

1 CROSS EXAMINATION

2 BY

3 MR. FOSCO:

4 Q. Good morning, Mr. Bodmer, my name is Carmen
5 Fosco, I have just a few questions. Could you turn
6 to Page 23 of your direct testimony.

7 A. Yes.

8 Q. And could you possibly speak closer to the
9 mike, I think it might help the court reporter. On
10 Line 683, or actually 682 and 683, you state that
11 in Com Ed's proposed rate return calculation the
12 Company makes an adjustment that increases its
13 equity by 292 million. Do you see that?

14 A. Yes, I do.

15 Q. And I just want to kind of clarify your
16 understanding, when you're saying it's been
17 increased, are you saying it's been increased from
18 the values as stated in its balance sheet or
19 increased from what it should be?

20 A. It's increased from the amount it should
21 be, not the amount on its balance sheet. It's
22 increased from the amount that would occur had all

1 the good will correctly been taken off of the
2 balance sheet.

3 Q. And then later on that same page at Line 68
4 to 689 you state, when all is said and done, Com
5 Ed's adjustment leaves more than 2.4 billion on Com
6 Ed's balance sheet as shown on the table below, do
7 you see that?

8 A. Yes.

9 Q. And is the reference to 2.4 billion, is
10 that basically your taking goodwill of 4,696
11 million (sic) and subtracting the adjustment of 2
12 million -- I'm sorry, 2,292 million (sic)?

13 A. Yes.

14 Q. If we could go to the table that starts on
15 the top of the next page. If I understand your
16 notations, you obtained the numbers in this table
17 from Com Ed's 10Q; is that correct?

18 A. That's correct.

19 MR. FOSCO: Your Honor, may we approach the
20 witness? Your Honor, I would mark this document as
21 ICC Staff Cross Exhibit 8, it's excerpts from Com
22 Ed's 10Q for the period ending June 30, 2005. It's

1 basically the table of contents and then the
2 financial statements found at Pages 11 through 15
3 of that 10Q.

4 BY MR. FOSCO:

5 Q. Mr. Bodmer, do you recognize the sheets in
6 this document?

7 JUDGE DOLAN: Mr. Fosco, do you have any copies
8 that we could look at?

9 MR. FOSCO: I'm sorry, your Honor, it was
10 especially intended for you.

11 (Whereupon, ICC Staff
12 Cross Exhibit No. 8 was
13 marked for identification
14 as of this date.)

15 BY MR. FOSCO:

16 Q. I believe you just answered that you were
17 familiar with that document?

18 A. Yes.

19 Q. And was this the 10Q report -- not the
20 paper I handed you, but is this the same 10Q report
21 that you used to prepare your table?

22 A. It appears to be, yes.

1 **Q.** And I just wanted to basically, the only
2 questions I have is just a few, is to understand
3 where these numbers came from. And you start
4 out -- well, let me ask you some questions about
5 the title just so we're clear what you're doing.

6 The caption says or the top says,
7 Capitalization Ratios With and Without Goodwill and
8 Exelon Holding Company Debt. I'm not clear what
9 the reference to the Exelon Holding Company Debt
10 means. I guess you're saying this doesn't make the
11 adjustments that you propose later in your
12 testimony for debt that Exelon issued to fund a
13 pension contribution, is that what you mean?

14 **A.** That is what I mean, yes.

15 **Q.** And your calculations show various capital
16 structures with and without goodwill; is that
17 right?

18 **A.** Yes, they do.

19 **Q.** Under without goodwill adjustment at the
20 top, and we'll just stick with June 30, 2005, you
21 state that the debt balance on Com Ed's SEC 10Q and
22 the amount shown is 4,623 million, correct? In

1 your table.

2 **A.** Yes.

3 **Q.** And am I correct that if you were to turn
4 to Page 14, numbered on the bottom 14, of the 10Q,
5 that that amount is derived by adding the 272
6 million for long term debt due within one year, the
7 300 million for long term debt to Com Ed
8 transitional funding trust due within one year, the
9 2,839 million for long term debt shown a little bit
10 further down, plus the next two long term debt
11 items, long term debt to Com Ed, transitional
12 funding trust of 851 million, and long term debt
13 due to other financing trusts of 361 million, that,
14 if I did the math right, give you the 4,623
15 million?

16 **A.** Very good, yes.

17 **Q.** And then you have an adjustment for
18 unamortized debt adjustments of 235 million. Does
19 that come from the balance sheets or did you just
20 take that number from something Com Ed had
21 presented?

22 **A.** I believe I took that from Com Ed's

1 schedules.

2 **Q.** And is what that amount does is adjust for
3 the amortization of the difference between how it's
4 presented on the balance sheet and what is
5 otherwise determined to be appropriate for rate
6 setting purposes?

7 **A.** Yes. I attempted to be consistent with Com
8 Ed's presentation for all items, except for the
9 goodwill. So Com Ed had made that adjustment and I
10 just -- I just adopted the same thing for purposes
11 of this schedule.

12 **Q.** And then that gives you the net, that
13 outstanding of 4,388 million?

14 **A.** Correct.

15 **Q.** I'm not going to mark this as an exhibit,
16 but I'm going to pass out a copy of the Com Ed
17 Exhibit 4.71 which is part of Mr. Mitchell's
18 testimony, I assume it will be entered later.

19 And then if you could refer to Page 1 of
20 2 of Com Ed Exhibit 7.1 on Line No. 2 is an amount
21 for long term debt and it's 4,388,487. And I
22 assume that's the number that corresponds to your

1 4,388 million?

2 A. Yes, it does.

3 Q. And then you are showing the total
4 capital -- well, you're showing total capital on
5 your chart, again, for June 30, 2005, with goodwill
6 of 11,875 million, correct?

7 A. Correct.

8 Q. And then if you go down further, you show
9 adjustments, what you've labeled Com Ed testimony,
10 you show a Com Ed adjustment -- well, strike that.
11 Let's -- on your chart for common equity on SEC
12 10Q, your amount is 7,487 million, correct?

13 A. Yes.

14 Q. And that comes directly from the balance
15 sheet on the 10Q; is that correct?

16 A. That's correct.

17 Q. And on the same page we were on before, it
18 has the next to the last number on the bottom of
19 Page 14?

20 A. Yes.

21 Q. Getting back to where I was, you didn't
22 show under the column, Com Ed testimony, you show

1 the equity balance we just discussed, 7,487
2 million, less a Com Ed adjustment of 2,292 million,
3 correct?

4 **A.** Correct.

5 **Q.** And then you come to an adjusted equity of
6 5,195 million, that's shown in Com Ed's testimony.
7 And am I correct that that, then, corresponds to
8 the 5,194,000 on Page 1 of 2 of Com Ed Exhibit 7.1?

9 **A.** You are correct, yes.

10 **Q.** And then on the other side, I assume you're
11 showing what is your adjustment, it is without
12 goodwill, and you are deducting 4,696?

13 **A.** That's correct.

14 **Q.** And I believe you've got that number from
15 the same balance sheet we've been looking at under
16 the page containing the asset listing, which is
17 Page 13. There is an amount there that says
18 goodwill 4,696, correct?

19 **Q.** And that's the same number you used?

20 **A.** Yes.

21 **Q.** And the goodwill that is shown on this
22 balance sheet, is it your testimony that that all

1 relates to the merger, the accounting related to
2 the merger transaction, the PECO Unicom?

3 **A.** I believe if not all, virtually all would
4 be related to that transaction. They might have
5 some minor goodwill adjustments for some other
6 acquisitions, yes.

7 **Q.** Well, you testified that goodwill only
8 arises from an acquisition; is that correct?

9 **A.** That's correct, yes.

10 **Q.** And then I just want to make sure I
11 understand your testimony. What you're showing us
12 in this chart is that -- well, let's backup just
13 one more little bit, let's go over the balance
14 sheet once more. Balance sheet gives us assets
15 less liabilities equals shareholder's equity,
16 correct?

17 **A.** That's one way to make the balance sheet
18 balance, yes.

19 **Q.** And I think we've just shown where the
20 numbers for Com Ed's capital structures that are
21 proposed come directly from this balance sheet,
22 correct?

1 **A.** That is correct, yes.

2 **Q.** And that capital structure includes the
3 goodwill that we've discussed, correct?

4 **A.** It does.

5 **Q.** And I think what you're showing us on this
6 chart is that Com Ed's adjustment effectively backs
7 out 2,292 million of that goodwill adjustment, but
8 leaves approximately -- well, 2,404 million?

9 **A.** Yes, that's precisely correct.

10 MR. FOSCO: That's the end of my questions, thank
11 you very much.

12 THE WITNESS: Thank you.

13 MR. FOSCO: Your Honor, I guess I would move for
14 admission of Staff Cross Exhibit 8.

15 JUDGE DOLAN: Any objection?

16 MR. JOLLY: No.

17 JUDGE DOLAN: ICC Staff Cross Exhibit 8.0 will be
18 admitted into the record.

19 (Whereupon, ICC Staff Cross
20 Exhibit No. 8 was
21 admitted into evidence as
22 of this date.)

1 MR. FOSCO: Thank you.

2 JUDGE DOLAN: Mr. Rippie.

3 CROSS EXAMINATION

4 BY

5 MR. RIPPIE:

6 Q. Good morning, Mr. Bodmer.

7 A. Good morning.

8 Q. We've met a few times before in our lives,
9 so I'll skip the formal introductions. Let's
10 begin, if I can, with some general principles that
11 I hope we can all agree on.

12 Will you agree with me that a proper
13 rate of return for a regulated utility is one that
14 is commensurate with the returns on investments on
15 other enterprises having corresponding risks?

16 A. Yes, I would.

17 Q. And would you agree that a proper rate of
18 return for a regulated utility is one that is
19 sufficient to assure confidence in its financial
20 soundness?

21 A. In general, yes.

22 Q. Would you agree that a proper rate of

1 return for Com Ed is one that is sufficient to
2 assure confidence in its financial soundness?

3 **A.** The confidence in its financial soundness
4 is not quite as direct and clear as the earlier
5 question you made about comparable risks, which is
6 absolutely an established principle that confidence
7 in financial soundness is obviously subject to
8 definition and debate, unlike the first question
9 you asked.

10 **Q.** Appropriately defined you would agree with
11 the principle?

12 **A.** Yes.

13 **Q.** Would you agree that a proper rate of
14 return for a regulated utility is one that respects
15 its ability to attract capital at reasonable and
16 competitive rates?

17 **A.** Yes.

18 **Q.** And would you also agree that if a utility
19 is forced below investment grade, at a minimum, it
20 will be unable to attract capital at reasonable and
21 competitive rates?

22 **A.** No.

1 **Q.** Would you agree that regulatory actions
2 that risk pushing a utility below investment grade
3 put that utility at risk of being unable to attract
4 capital at reasonable and competitive rates?

5 **A.** I'm not trying to bicker, but that really
6 is such a function of the leverage decisions of the
7 utility, as well as regulatory actions, that that's
8 what makes me reluctant to answer that question.

9 And in addition, I look at a lot of
10 below investment grade transactions, clearly
11 companies can attract capital in kind of a double B
12 plus level.

13 **Q.** Is it your testimony to this Commission
14 that attracting capital at those subinvestment
15 grade rates are reasonable for a utility?

16 **A.** It would definitely depend on the context.
17 If Com Ed made a decision to leverage itself up to
18 90 percent and consciously decided to take
19 advantage of the tax deductions and other benefits
20 associated with that level of leverage, it
21 definitely might be reasonable.

22 **Q.** Well, let's assume the reality that Com Ed

1 continues to behave in the way that Mr. Mitchell
2 describes his capitalization policy. With that
3 assumption, would you tell this Commission that
4 acquiring capital at subinvestment grade rates is
5 reasonable?

6 **A.** There is clearly a demarcation in the cost
7 of borrowing between triple B and a double B level.
8 And I would agree that there is a large increase in
9 the cost of new borrowers, of new borrowings when
10 you fall to that level. Obviously we have had the
11 second largest utility in Illinois, Illinois Power,
12 being subinvestment grade up until the acquisition
13 of Ameren.

14 **Q.** So is the answer to my question that it is
15 reasonable or that it isn't?

16 **A.** I didn't directly answer your question and
17 I'm apologizing for that, because the definition of
18 reasonable, it might be. I am acknowledging,
19 though, and I'm trying to be as forthright as
20 possible, and saying I totally would agree that it
21 is far more expensive and that is the bond rating
22 where the incremental cost of debt increases

1 significantly.

2 Q. I'll try a simpler one and then we'll move
3 on. Would you agree that a company's cost of
4 equity and debt are each determined by the
5 requirements of its investors in that equity and
6 debt?

7 A. Well, the cost of debt would be the
8 historic investors, so if you had an issue that was
9 issued --

10 Q. I'll grant you that. In the case of debt
11 being historic investors, with that qualification,
12 you will agree with my statement?

13 A. That's the theory, yes.

14 Q. That's the fact, isn't it?

15 A. Measurement is the whole reason I'm here,
16 but, yes.

17 Q. So when Mr. Mitchell says that the costs of
18 the various components of a utilities capital
19 structure are determined by the capital market
20 based on the financial characteristics of the
21 utility and the components of the capital
22 structure, you would agree with that statement,

1 right?

2 **A.** Again, the cost of equity, except, and
3 that's why I made such a big point of it in this
4 case, generally is an unobservable number. We have
5 a unique situation in this case where we can --

6 **Q.** I'm not asking about cost of measurement,
7 I'm not asking about measurement, it's a real
8 simple question. Mr. Mitchell testified that the
9 costs of the various components of a utility's
10 capital structure are determined by the capital
11 markets based on the financial characteristics of
12 the utility and the component of the capital
13 structure. That is a true statement, isn't it?

14 **A.** That's a reasonable statement, yes.

15 **Q.** Now, in the capital markets, investors have
16 a variety of options that they can choose to take
17 advantage of, right?

18 **A.** Yes.

19 **Q.** They can invest in new debt issue, they can
20 invest in existing debt issue, they can invest in
21 equity and a variety of intermediate investments,
22 true?

1 **A.** True.

2 **Q.** And the equity capital markets are at least
3 national and in many cases international, true?

4 **A.** Correct.

5 **Q.** Debts market as well, at least national, in
6 some cases international?

7 **A.** Yes.

8 **Q.** Are you familiar with the sets of sample
9 companies chosen and used by staff, IIEC and Com Ed
10 witnesses in their analyses of the cost of equity
11 of Com Ed?

12 **A.** I believe the IIEC used the same sample as
13 Com Ed, so I'm familiar with those two samples,
14 yes.

15 **Q.** And the members of those samples are
16 utilities with operations all over the country,
17 right, or utility holding companies?

18 **A.** Yes.

19 **Q.** Equity investors in Commonwealth Edison
20 have the option to also invest in equity of those
21 companies, correct?

22 **A.** They do.

1 **Q.** Now, your recommendation is that the
2 Commission find that Com Ed's cost of equity is
3 7.75 percent per year; is that correct?

4 **A.** I don't know why you said per year, but I
5 do -- I recommended 7.75, yes.

6 **Q.** Well, I hope it's not per decade.

7 **A.** On an annual basis, anyway.

8 **Q.** That's 325 basis points lower than Com Ed's
9 recommend, 244 below staffs and 215 below IIEC's;
10 is that correct.

11 **A.** I accept that, subject to check, yes.

12 **Q.** I actually triple checked my math today.
13 Is it also true that you are aware of no decision
14 of this Commission, at least since 1/1 of '04,
15 awarding any electric utility a return on equity
16 that low?

17 **A.** I am not aware of this Commission, that's
18 correct.

19 **Q.** And in fact, you are not aware of this
20 Commission awarding an electric utility a cost of
21 equity within 150 basis points of that number, are
22 you?

1 **A.** Since 1/1/04? No, I'm not.

2 **Q.** Same is true for gas utilities, right?

3 **A.** I didn't study the issue.

4 **Q.** You're not aware of any?

5 **A.** I'm not aware of any.

6 **Q.** Mr. Bodmer, I've showed you a copy of a

7 document that's been marked Com Ed Exhibit 38.1

8 that's attached to Dr. Hadaway's testimony. You've

9 seen that before, right?

10 **A.** I have, yes.

11 **Q.** I call it a mountain chart. Is that an

12 acceptable name for it?

13 **A.** Yes.

14 **Q.** And that chart depicts Dr. Hadaway's survey

15 of 2004 through 2005 approved ROE's. Does it also

16 accurately depict the ROE's that you are proposing?

17 **A.** Yes.

18 **Q.** I understand you were in Switzerland last

19 week, maybe skiing?

20 **A.** No.

21 **Q.** Not skiing, just in Switzerland. Is it

22 fair to say your ROE's kind of got left at the

1 chalet?

2 **A.** No, it's fair to say that my ROE's
3 consistent with three of the most prominent
4 investment banks and I was working on investment
5 banking in Switzerland.

6 **Q.** Now, I asked you in a data request or Com
7 Ed asked you in a data request, to identify
8 anywhere in the United States where there was an
9 ROE's awarded that was anything like this. And in
10 fact, after what I presumed to be a diligent
11 search, you came up with exactly one case, right?

12 **A.** I wouldn't call it a diligent search. I
13 came across one case from my client.

14 **Q.** Well, you came across a 2003 West Virginia
15 water company, right?

16 **A.** I would have to check the date, I thought
17 the date was different than that.

18 **Q.** Well, the order might be in early '04, but
19 it's a 2003 filing, it's West Virginia Docket
20 No. 03-0353, W-42 T, correct?

21 **A.** I think the order was in 2004, yes.

22 **Q.** That case was appealed, wasn't it?

1 **A.** I was told that it was appealed, yes.

2 **Q.** Would you agree with me that during the

3 course of the appeal it was settled in the course

4 of the 2004 filing, with a rate of return,

5 depending upon how calculated, between 9 and

6 9.8 percent?

7 **A.** I'm not aware of that.

8 **Q.** One way or the other, you're not aware one

9 way or the other?

10 **A.** I'm not aware one way or the other.

11 **Q.** Now, as I understand your recommendation,

12 it's that the total cost of capital for Com Ed be

13 set at 6.7 percent per year, right? 7.9, sorry.

14 **A.** Yes.

15 **Q.** That's 215 basis points below Com Ed's

16 recommendation, right?

17 **A.** Again, it's --

18 **Q.** Subject to check?

19 **A.** Yes.

20 **Q.** You are not aware of any decision of this

21 Commission in the last 5 years awarding an electric

22 utility an ROR anywhere near this level, are you?

1 **A.** Again, I would have to research that.

2 **Q.** You are not aware of one?

3 **A.** I am not aware.

4 **Q.** Since you told me, you also didn't look
5 into it, right?

6 **A.** I didn't believe it was relevant,
7 absolutely.

8 **Q.** You are also not aware of any electric
9 distribution or integrated electric utility
10 anywhere in the United States being awarded an
11 ROE's like that since 2004, are you?

12 **A.** Again, I explained in my rebuttal testimony
13 why I believe that's an inappropriate standard, and
14 I'm certainly not aware of any situation like that,
15 no.

16 **Q.** It is your position, is it not, that the
17 return on equity proposed by the staff of this
18 Commission, is unreasonable?

19 **A.** Based on review --

20 **Q.** It's a yes or no question.

21 **A.** Yes.

22 **MR. JOLLY:** I think we've set a precedent here

1 mand Mr. Thomas articulated that the other day,
2 that witnesses will be allowed to elaborate on
3 their answers, and I think all witnesses should be
4 afforded the same opportunity that Com Ed witnesses
5 have been afforded.

6 MR. RIPPPIE: I'm sorry, I just didn't think that
7 that question required an elaboration, whatsoever.

8 MR. JOLLY: Well, I think again in response to --

9 JUDGE DOLAN: Mr. Jolly, I believe, though, also
10 with Mr. Thomas, it was -- he had to answer the yes
11 or no, and then he was -- he could elaborate at
12 that point. So I think that's where we left it.

13 MR. JOLLY: Okay, thank you.

14 BY MR. RIPPPIE:

15 Q. Did you want to -- your answer was that it
16 is your position that staff's ROE is unreasonable?

17 A. It is, yes.

18 Q. And the same is true of the return on
19 equity proposed by IIEC?

20 A. Absolutely. And it is in light of the
21 information that's available from the investment
22 banks and in light of the market to book ratios

1 that are observed in the industry. They are
2 entirely inconsistent with the sorts of returns
3 shown on your chart, yes.

4 Q. I'm going to now try to rip through a bunch
5 of DR's for a few minutes, and I'll try to go as
6 fast as I can. I'll touch on a variety of topics.

7 You testified at several places in both
8 your direct and rebuttal concerning changes in
9 income tax rates that have occurred since Com Ed's,
10 at least '01 delivery case, do you recall that
11 testimony?

12 A. Yes, I do.

13 Q. It is correct, however, that you have done
14 no study of whether, and if so, how much there was
15 a change in the dividend rate or stock price of
16 other companies in response to the change in tax
17 rates?

18 A. That's not correct. Since the data
19 request, in fact just the other day, I took a look
20 at the price to earnings ratios before the May 2003
21 change in the tax rate, immediately subsequent to
22 that rate, and noticed --

1 **Q.** I just asked if you did a study. I didn't
2 ask you what the results were, I asked you whether
3 you did one, you've now told me that you did one
4 after the data request?

5 **A.** Yes.

6 **Q.** Did you supplement the data request
7 response?

8 **A.** No, I literally looked at this yesterday.

9 **Q.** The data request response you gave us
10 indicated that you had done no such study?

11 **A.** That's correct.

12 **Q.** And you have turned no such study over to
13 Com Ed?

14 **A.** That's correct.

15 **Q.** Is it also true that you believe -- that
16 you do not believe that the only reason that a
17 utility's stock may trade at a multiple of its book
18 value is that it is earning an excessive return?

19 **A.** I think my response to that data request
20 was that the overwhelming reason for observation of
21 a market to book ratio is different to one or the
22 observation of variants in the market to book

1 ratio, is the earned return.

2 And that's really such a fundamental
3 foundation of finance. When these things -- when
4 you start divorcing the earned return from the
5 market value, you start to see bubbles. In fact,
6 there is a lot of discussion that the bubble in the
7 stock prices that occur around the year 2000 was
8 precisely because the market values didn't reflect
9 the earned returns, the return potentials.

10 So, in answer to that data request I
11 emphasized that the overwhelming reason for
12 variants in the market to book ratio is the earned
13 return on capital.

14 **Q.** We're going to have to take a little more
15 time. In your answer, you indicated that it was
16 not the only reason; is that correct?

17 **A.** Yes.

18 **Q.** You suggested, further, that you thought
19 there was an R squared of .79, correct?

20 **A.** There, yes.

21 **Q.** Now, if a utility holding company gets its
22 returns from numerous sources, other than the

1 utility, right, it can? If you want me to
2 personalize, make it more concrete?

3 A. Sure.

4 Q. Exelon gets its returns from a lot of
5 sources other than Com Ed, right?

6 A. It gets its returns from three sources, it
7 gets its returns from PECO, from Com Ed and from
8 essentially the assets that were formerly owned by
9 PECO and Com Ed, yes, and Exelon Gen.

10 Q. And other assets in Exelon Gen?

11 A. Not many, but some, yes.

12 Q. Clinton?

13 A. Yes, formerly regulated.

14 Q. Texas?

15 A. There are some, two small combined cycle
16 plans or combustion turbine plants. But I looked
17 at the income generation from the Texas plants
18 which were very minor.

19 Q. All the portfolios of owned contracts? You
20 can say yes, it's okay.

21 A. Okay.

22 Q. The .79 R squared is the holding company

1 return, not Com Ed's, right, or a utility holding?

2 A. Certainly. For Nicor it would be for the
3 holding company, yes, absolutely.

4 Q. Now, at I believe one, two, three places in
5 your testimony, you quote Seth Armitage, right?

6 A. I quote him, yes.

7 Q. And the reason you quote him is because you
8 think he's a reliable source and that you relied on
9 what he wrote in the course of developing your
10 opinion, right?

11 A. Not really. I read his materials and in
12 particular the excerpts that I read I agreed with.

13 Q. Thought they were --

14 A. I thought they stated the facts correctly,
15 yes.

16 Q. Now, at Lines 136 -- I'm sorry, 163,
17 through 164 of your direct testimony you state that
18 you use information from reports presented as part
19 of the PS & G transaction to describe the cost of
20 equity. Have I quoted you correctly?

21 A. I'm sorry, what was the line number again?

22 Q. 163 to 164 of Exhibit 1, corrected.

1 **A.** Yes.

2 **Q.** And at Lines 123 to 124, you confirm that
3 that, quote, analysis, is different from the more
4 typical theoretical cost of capital testimony
5 presented in rate increase proceedings. Have I
6 quoted you correctly, again?

7 **A.** It is a direct representation of the cost
8 of capital, yes, that's absolutely correct.

9 **Q.** Which is different from the type typically
10 presented, right?

11 **A.** Which is an indirect inferred number, yes.

12 **Q.** Now, let's talk about where you get your
13 numbers from. Would you agree with me that none of
14 the investment banks in question, Morgan Stanley,
15 J.P. Morgan, and Lehman Brothers was retained to
16 calculate a regulatory ROE's for Com Ed under
17 either constitutional or Illinois standards
18 applicable to such a proceeding?

19 **A.** No, absolutely no not.

20 **Q.** It's your testimony that Lehman Brothers,
21 J.P. Morgan, and Com Ed, -- sorry, Lehman Brothers,
22 J.P. Morgan or Morgan Stanley were retained to

1 develop an ROE for the purpose of the Commerce
2 Commission setting Com Ed's rate, is that your
3 testimony?

4 **A.** I'm sorry, the word retained, thank you for
5 clarifying that. I wanted to make absolutely clear
6 that your very first question to me, which defined
7 the cost of equity as the opportunity cost for
8 investments was similar risk is precisely the same
9 equity discount rate used by Morgan Stanley.

10 **Q.** I don't want to have any misunderstanding
11 about my question, okay. My question is, none of
12 the three investment banks in question were
13 retained to develop an ROE's for use by this
14 Commission in a proceeding like this, correct?

15 **A.** Absolutely, it was not for this proceeding.
16 It wouldn't have been 300 basis points lower than
17 Dr. Hadaway's recommendation, obviously, if it was
18 for the purpose of this proceeding, absolutely,
19 correct.

20 **A.** Now, you particularly call out at Lines 184
21 and 186, Morgan Stanley, right.

22 **A.** Yes, I do.

1 **Q.** Who is Morgan Stanley's client?

2 **A.** I believe it was your merger partner, I
3 believe it was PSEG.

4 **Q.** Morgan Stanley was not an agent of either
5 Com Ed or Exelon, is it?

6 **A.** Right now, you are effectively merged, but
7 at that point in time it was retained by PSEG?

8 **Q.** Now, do you know whether -- strike that.
9 Do you know whether it is the opinion of
10 any of the three investment banks in question
11 whether it is appropriate to use their opinion for
12 the purpose that you propose to use? Remember my
13 question is, do you know.

14 **A.** Yes, I think I do. I reviewed a letter
15 that was attached to Dr. Hadaway's testimony where
16 Lehman Brothers acknowledged that their cost of
17 capital is 300 basis points below the regulatory
18 ROE. So based on that letter, the answer to your
19 question is yes.

20 **Q.** Your understanding is that they disagree
21 with your use of their work, or at least Lehman
22 Brothers does?

1 **A.** I assumed the same request and the same
2 discussion went to J.P. Morgan, at least because
3 they are also retained by you. And I read the
4 letter and the letter was not very convincing. The
5 only convincing part of that letter was the
6 300-basis point differential, which was presumably
7 finally cleared up.

8 **Q.** So the answer to my question, they don't
9 agree, right?

10 **A.** The answer to your question, they are a
11 large client of Exelon and Com Ed, being paid
12 millions of dollars by the Company and they made
13 some very general unconvincing statements in the
14 letter that they don't agree, yes.

15 **Q.** We'll talk about the substance of the
16 letter, perhaps, later, but I'm now asking you, I'm
17 not sure there is such a thing as a motion to
18 strike cynicism, so I'll ask you one last time,
19 they don't agree with your use of their work
20 product, right?

21 **MR. JOLLY:** I object, I think that's asked and
22 answered. And his last answer Mr. Bodmer stated

1 was that Lehman Brothers did not agree.

2 MR. RIPPKE: With that stipulation, I'll take it
3 as answered.

4 BY MR. RIPPKE:

5 Q. Com Ed in this case presented a set of cost
6 of capital studies, right? That's an easy one.

7 A. Yes.

8 Q. So did staff, yes?

9 A. Yes. None of which directly represented
10 investment or invest -- that's true.

11 Q. I'm trying to stick to my hour here, they
12 presented a cost of capital studies, right?

13 A. Okay.

14 Q. As to some extent did IIEC, right?

15 A. Yes.

16

17 (Change of reporters.)

18

19

20

21

22

1 **Q.** Is that a yes?

2 **A.** Yes, it is.

3 **Q.** And although they use some different data,
4 they all use, essentially, equivalent modeling
5 techniques; namely, a DCF study and a CAPM
6 analysis, right?

7 **A.** As did I, yes.

8 **Q.** You, however, reject Staff's methodology as
9 unreasonable, do you not?

10 **A.** I reject the answer as unreasonable;
11 particularly, in light of the available information
12 we're discussing.

13 I think I pointed out some differences
14 in my testimony. The differences included the
15 method by way they use to compute growth rates, the
16 quarterly discounting adjustment, and, in
17 particular, the use of an average rather than a
18 median.

19 And I recognize -- with those
20 adjustments, I reconciled the Staff's number to my
21 own.

22 **Q.** Now, do you recall my or ComEd asking you

1 data requests that went both to the numerical
2 results of Staff's analysis and to the methodology?

3 And do you recall in response to -- I'm
4 going to try to do this fast. Okay. So if you
5 want me to go through all the steps, I will.

6 But in response to Data Request 4.20
7 which, quote, "Is Staff's proposed methodology for
8 estimating ComEd's required ROE reasonable, if not,
9 why not?" You answered, "No. See the final section
10 of your rebuttal testimony."?

11 **A.** And I just described a lot of the elements
12 of that testimony.

13 **Q.** You also found IIEC's method unreasonable?

14 **A.** For similar reasons relating to the
15 quarterly adjustments and user growth rates, yes.

16 **Q.** Now, is it true that you are not aware of
17 any decision of this Commission in which it has
18 based a Utility's allowed return on common equity
19 in whole or in part on an investment bank's opinion
20 of, analysis of, valuation of or rate of return of
21 the Utility's corporate parent in the context of a
22 merger?

1 It's DR 4.04A, if you want to refresh
2 your recollection.

3 **A.** I think you asked a question immediately
4 prior to that about -- I don't understand the
5 corporate parent part in the question, since my
6 recommendation was to use the Morgan Stanley which
7 was a direct representation of the ComEd and PECO
8 cost of capital.

9 **Q.** I think we --

10 **A.** But, of course, to answer your question,
11 I'm sorry. The answer is absolutely yes because,
12 obviously, that is not available.

13 And the whole point of my testimony is
14 to use this incredibly valuable, available
15 information which shows the 300-basis point
16 differential.

17 **Q.** I promise we will get to availability in
18 about 90 seconds. I have five questions, though,
19 before I get there.

20 The answer to my question is, you are
21 aware of no decision of the Commission in which it
22 is used an investment bank report either in the

1 context of a merger or, if I can roll the second
2 question or in, any other context to set an ROE,
3 right?

4 **A.** I just said it's not available, correct.

5 **Q.** And are you aware of any decision of this
6 Commission where it will held that using such
7 information would be appropriate or preferable to
8 traditional approaches?

9 **A.** Since the information was not available, of
10 course not.

11 **Q.** Are you aware of any decision of the
12 Commission in any context in which it said that
13 investment banks quote, "had better knowledge of
14 their return requirements of investors" unquote,
15 than that that can be derived by traditional
16 techniques?

17 **A.** I certainly aggressively make that point.

18 But again the quality of this
19 information, three prominent investment banks
20 coming up with weighted average cost of capital in
21 the range of 5 to 6 percent was not available
22 earlier. So of course not.

1 **Q.** And you, lastly, are aware of no decision
2 of the Commission where they hold that this type of
3 investment bank information, quote, "is a direct
4 proxy for investor requirements," unquote?

5 **A.** No, I tried to explain that in my
6 testimony, so I'm not aware of any decision.

7 **Q.** You were a Commission Staff member for a
8 while and frequently testify in Illinois; do you
9 not?

10 **A.** A very long time ago.

11 **Q.** You testified in ComEd's 2000 -- I'm sorry.

12 You testified in ComEd's 2001 DST rate
13 case; did you not?

14 **A.** Yes.

15 **Q.** What was the test year used?

16 **A.** I can't recall.

17 **Q.** Do you accept, subject to check, 2000?

18 **A.** I accept that.

19 **Q.** Wasn't the Unicom merger pending for
20 10 months for the year 2000?

21 **A.** You know, in that case, you have to put
22 yourself back in that case.

1 In that case, we had some discussions
2 about rate of return and cost of capital. It was,
3 essentially, irrelevant in that case because the
4 way the DST worked with transition charges, if the
5 DST rate increased, transition charges went down.

6 So it was clearly not a significant
7 issue. And it wasn't the type of significant issue
8 related to rate base and other adjustments that
9 would have forward implications to 2007 when rates
10 are really going to be in place.

11 **Q.** I'll actually go back and discuss that
12 answer with you for a minute since you gave it.

13 But I do want an answer to my question
14 which is: The Unicom merger was pending for a full
15 10 months for the year 2000, wasn't it?

16 **A.** I think so, yes.

17 **Q.** And there were investment-bank-fairness
18 opinions on that merger; were there not?

19 **A.** Yes.

20 **Q.** Now, can I take from your long answer that
21 the reason that you dismissed that example is
22 because you regard the ROE as having been

1 unimportant?

2 **A.** The reason from my client's perspective at
3 the time for not aggressively looking into the cost
4 of capital was its implication.

5 I'm not saying we can dismiss the
6 investment-bank opinions, none whatsoever;
7 absolutely not.

8 **Q.** Now, do you know when Ameren's merger with
9 IP was announced?

10 **A.** I believe it was 2004. I'm not sure.

11 **Q.** Would you accept, subject to check, that it
12 was announced on December -- in December of 2003?

13 **A.** I accept that, yes.

14 **Q.** And closed in December of 2004?

15 **A.** Okay.

16 **Q.** Do you know what Docket 04-0476 was?

17 **A.** No.

18 **Q.** Would you accept that Illinois Power had a
19 pending gas rate case titled, 04-0476?

20 **A.** I accept that.

21 By the way, I did look into the, at
22 least, publicly available information from the

1 Illinois Power and Ameren merger.

2 I looked at the prospectus and there was
3 no comparable discussion of the weighted average
4 cost of capital. So that information was not
5 certainly, at least publicly, available in terms of
6 the weighted-average cost of capital analogous to
7 your merger.

8 Q. You know there are discovery rules in the
9 Commission, right?

10 A. I found that the discovery rules in getting
11 this sort of, obviously, available information, are
12 quite -- don't work so well.

13 Q. Do you know when Ameren announced its
14 merger with CILCO?

15 A. I don't know the specific day it was.

16 Q. If I told you --

17 A. It was a couple years earlier.

18 Q. If I told you April of 2002, do you accept
19 that subject to check?

20 A. Yes.

21 Q. And it didn't close until 2003, did it?

22 A. I don't know, but I would accept that.

1 **Q.** Would you also accept that CILCO filed gas
2 rate case captioned 02-0837 that was pending while
3 its merger was open?

4 **A.** I would accept that, yes.

5 **Q.** And the rates of return in those GAPS rate
6 cases mattered to rates, didn't they?

7 **A.** Yes.

8 **Q.** Do you know when the Ameren CIPs merger was
9 announced?

10 **A.** This was a pooling of interest merger. I
11 think it was in '97. And I did review that one, as
12 well.

13 Again, just like the Illinois Power
14 merger, there was no information, at least
15 available in a public prospectus, on the cost of
16 capital for that merger.

17 **Q.** You have no idea what other information was
18 available to the witnesses in those cases or could
19 have been ascertained by discovery because you
20 weren't involved in those cases, were you?

21 **A.** That's correct. That's just what's in the
22 FCC filing.

1 **Q.** Isn't it true that at the same times that
2 the Ameren CIPs merger was going on, Ameren CIPs
3 had a case pending docket, a rate case pending
4 docket, 98-0545?

5 **A.** I'm not aware of that, but I'll accept it.

6 **Q.** Would you agree or disagree that
7 investment-bank-fairness opinions in the context of
8 a merger are based on the results of different
9 analytical methods which examine relative equity
10 value per share of the two companies and not the
11 absolute value of either company?

12 **A.** Would you mind repeating that question.

13 I'm sorry.

14 **Q.** Would you agree or disagree that
15 investment-bank-fairness opinions in the context of
16 a merger are based on the results of a number of
17 different analytical methods which examine relative
18 equity value per share of the two companies and not
19 the absolute value of either company?

20 **A.** No, not in general, no because --

21 **Q.** I really want to get this done.

22 **A.** Okay.

1 MR. JOLLY: Again, I think witnesses have had an
2 opportunity.

3 MR. RIPPKE: Ron, if it's going to save
4 redirect, I won't object. But I'm going to go on.

5 MR. JOLLY: Then I would object to -- I would
6 ask that Mr. Bodmer be provided an opportunity to
7 explain his answer. That's been the practice.

8 JUDGE HALOULOS: Overruled.

9 MR. JOLLY: Overruled? Okay. Thank you.

10 BY MR. RIPPKE:

11 Q. Would you agree or disagree that
12 investment-bank-fairness opinions in the context of
13 a merger are based -- strike that please.

14 Would you agree -- I'm going to read you
15 the same question again.

16 Would you agree or disagree that
17 investment-bank-fairness opinions in the context of
18 a specific merger use company data for a specified
19 period of time, while in contrast a typical
20 regulatory analysis is based on the concept that
21 stock prices represent the discounted value of all
22 future dividends that investors expect to receive?

1 **A.** That's blatantly incorrect.

2 I'm sorry. But that's very incorrect.

3 **Q.** Would you agree or disagree that
4 investment-bank-fairness opinions in the context of
5 a merger use internal company data, while in
6 contrast regulators rely on public market data to
7 reflect the value of the company?

8 **A.** I completely disagree with that, as well.

9 **Q.** Would you agree or disagree that
10 investment-bank-fairness opinions -- in
11 investment-bank-fairness opinions the return on
12 equity is applied to historic or depreciated invest
13 while in a cost-of-capital computation -- I'm
14 sorry.

15 Let me try that whole question again
16 please.

17 Would you agree or disagree that
18 investment-bank-fairness opinions in the context of
19 a merger apply the return in equity to a
20 market-base valuation of the assets?

21 **A.** They don't use a return on equity. They
22 use a cost of equity to discount cash flow.

1 The same cost of equity that you defined
2 for me in the very first question you asked me.

3 **Q.** So you disagree?

4 **A.** It's exactly the same. I completely
5 disagree.

6 **Q.** Do you agree or disagree that regulators
7 measure capital structure percentages with actual
8 debt and equity amounts in the balance sheet; in
9 contrast, investment banks use the number of shares
10 outstanding multiplied by the share price to
11 establish the market value?

12 **A.** Yes, I stated that in my testimony.

13 **Q.** Would you agree or disagree that the sole
14 purpose which Lehman Brothers, Morgan Stanley,
15 and/or J.P. Morgan had in addressing the fairness
16 of the exchange ratio of the proposed Exelon PSEG
17 was, addressing the fairness of the exchange ratio
18 of the proposed Exelon PSEG merger, and it is not
19 appropriate for other purposes; such as,
20 determining the cost of equity in a regulatory
21 process.

22 Do you agree or disagree?

1 **A.** I couldn't disagree more.

2 MR. RIPPIE: Your Honor, I handed the witness a

3 document which I marked as ComEd Cross-Exhibit 6.

4 (Whereupon, ComEd Cross Exhibit No. 6

5 was marked for identification.)

6 BY MR. RIPPIE:

7 **Q.** Do you recognize that document?

8 **A.** Just from perusing it, I recognized it

9 seems to be different in one respect from the

10 exhibit that was originally attached to

11 Dr. Hadaway's rebuttal.

12 **Q.** It's signed, right?

13 **A.** The date was in brackets. I don't know. I

14 suppose it's signed, yes.

15 **Q.** Will you accept my representation that

16 otherwise it's identical?

17 **A.** I will accept it. I haven't re-read the

18 whole letter, no.

19 **Q.** Earlier in your cross-examination, you

20 discussed a letter that you reviewed from Lehman

21 Brothers. Is this the letter?

22 **A.** This appears to be the letter, yes.

1 **Q.** Mr. Bodmer, do you have any doubt that this
2 letter is Lehman Brothers' description to
3 Commonwealth Edison of what it did in developing
4 its fairness opinion?

5 **A.** I absolutely have doubts. I suspect that
6 the way this letter was sent was that --

7 **Q.** I don't want you to speculate.

8 MR. JOLLY: The question is asking him to
9 speculate.

10 MR. RIPPIE: No, it's not. It's asking the
11 witness whether he has any doubt if the letter is
12 accurate. If his answer to that question is yes,
13 then that's -- I'm not calling for him to
14 speculate.

15 THE WITNESS: Would you mind re-reading the
16 question.

17 (Whereupon, the record was read as requested.)

18 MR. RIPPIE: I'm not asking --

19 THE WITNESS: Definitely, I have strong doubts,
20 yes.

21 BY MR. RIPPIE:

22 **Q.** Let's parse that into two questions and

1 then we'll move on to the next one.

2 You don't have any doubt that this is in
3 fact Lehman Brothers' description to ComEd, right?

4 **A.** This is a response to a request that you
5 made for them to review the testimony.

6 And the only thing that's compelling in
7 this whole letter to me is the very finding
8 paragraph where they discuss that there are 300 or
9 more basis points less.

10 **Q.** That's the paragraph that appears at the
11 top of Page 3, right?

12 **A.** Yes.

13 **Q.** That paragraph is not referring to their
14 specific opinion, is it? It's referring to
15 typically?

16 **A.** Well, you know, it's amazing to me.

17 I --

18 **Q.** I really don't want to get into an argument
19 with you. I just want you to answer my question.

20 Is the answer to my question yes or no?
21 If you have to explain, you'll get to explain.

22 **A.** Well, yes, because we don't know because

1 after I asked for this number repeatedly, you,
2 obviously, had conversations with them, and I'm
3 sure the other investment banks. And they would
4 produce this letter and they still wouldn't tell
5 you what the answer is.

6 So the answer is, no, they didn't tell
7 you precisely what their number is.

8 **Q.** Do you have any doubt that the letter is
9 signed by the managing director of Lehman Brothers
10 and that it's authentic?

11 **A.** It is signed. I don't dispute his
12 signature. And I don't dispute this letter was
13 written by Lehman Brothers, absolutely not.

14 **Q.** Now, hopefully I'll ask this in a way that
15 it's simple.

16 You have no evidence that ComEd has in
17 its possession or control any document related to
18 any investment bank analysis that it has not
19 produced, do you?

20 **A.** You know, we have this letter where you
21 could obviously get Lehman Brothers to make a
22 comment on my testimony. And it defies logic. And

1 it defies credibility, in my opinion, to think that
2 they would not have provided the number.

3 Q. I'm --

4 A. So I'm trying to answer the question, but
5 it just is remarkable to me.

6 Q. I understand you are having trouble with my
7 question.

8 A. That they're going to give you this letter
9 and that they would not give you the number or you
10 didn't ask them -- ask them for the number after we
11 had all of these data requests -- made all of these
12 data requests.

13 Q. Do you remember what my question was?

14 A. No.

15 Q. It will speed things up if your attorney
16 gets you 4.31 B.

17 Neither you or CCC have any evidence
18 that ComEd is in possession or control of any
19 document relating to any investment bank analysis
20 that it didn't produce, do you?

21 A. That very -- that response was prepared
22 before I saw this Lehman Brothers letter. I

1 suppose I really do apologize. I should have
2 modified that response once I saw this letter.

3 **Q.** I did read the data request fairly; did I
4 not?

5 **A.** You did read it.

6 **Q.** It's never been supplemented or revised?

7 **A.** It hasn't, no. I apologize for that.

8 **Q.** I want to be clear, Mr. Bodmer. Are you
9 saying -- are you testifying today, that ComEd is
10 withholding a responsive document?

11 **A.** I don't know.

12 What I do know from working in a large
13 financial institution that is now one of the three
14 investment banks we discussed, I know how they
15 respond to clients. And I know that you have a
16 document here that demonstrates you have,
17 obviously, been in contact with the investment
18 banks.

19 Perhaps, you chose not to ask the
20 question. But it defies -- it's really quite
21 surprising to me that Lehman Brothers would not
22 have given you the answer or the underlying cost of

1 equity if you had asked, particularly after it gave
2 you this letter.

3 So --

4 MR. RIPPIE: I move to strike everything after
5 the first sentence of his answer.

6 He failed to reportedly update the data
7 request response.

8 I asked him whether it was his testimony
9 that ComEd was withholding anything. He said he
10 didn't know.

11 The rest of it is speculation on what
12 conversations did or did not occur and what we may
13 or may not have asked.

14 It's both speculative, and more
15 importantly, it is not an explanation of the an
16 answer to the question. It's gratuitous.

17 MR. JOLLY: I would say, it's not speculative in
18 that Mr. Bodmer says -- has testified that he
19 became aware of the Lehman Brothers' letter which
20 was attached to Dr. Hadaway's surrebuttal
21 testimony, which I'm trying to recall, I think it
22 may have been served roughly what, eight, days ago

1 perhaps.

2 So given the information that was
3 provided in the letter and Dr. Hadaway's
4 description of how the letter was obtained, I'm not
5 certain that the question -- or Mr. Bodmer's answer
6 is speculative.

7 It's based on his understanding of how
8 the letter was obtained from Lehman Brothers.

9 As to his answer being superfluous,
10 again, I guess I would point to what seems to me to
11 be the practice that's been allowed in these
12 hearings at this point where witnesses are provided
13 an opportunity to explain their answers.

14 JUDGE HALOULOS: He apologized for not updating
15 his testimony. So it will be stricken.

16 MR. JOLLY: If I might, I don't want to argue
17 with you. But, again, the -- well, I'll leave it
18 for redirect.

19 Thank you.

20 BY MR. RIPPIE:

21 Q. New topic.

22 Mr. Bodmer, would you agree that for a

1 utility to hire its business risk, the higher the
2 rate of return is required to induce investors to
3 make investments in its equity?

4 **A.** All else being equal, in particular the
5 leverage of the company, yes.

6 **Q.** I'll accept your qualification.

7 All else being equal, the higher the
8 business risk, the higher of the rate of return
9 required, right?

10 **A.** The higher the cost of capital, yes.

11 **Q.** Now, it is your testimony that in your
12 view, ComEd faces a relatively low business risk,
13 right?

14 **A.** It certainly does.

15 **Q.** And that is one reason that you rely on why
16 it ought to have, in your view, an ROR relative --
17 a lower ROR relative to other utilities, right?

18 **A.** I don't think I made that particular
19 statement, but it's a reason certainly that the
20 rate of return, the cost of equity capital is, for
21 example, lower than it has when it was an
22 integrated utility or even when it was or even

1 during the transition period.

2 **Q.** You cited in your testimony several reasons
3 why you think it is less risky. And you talk about
4 operating risks, and external financing needs, and
5 construction requirements, right?

6 **A.** I think in my direct testimony, I discussed
7 the fact that on a relative basis, more revenues
8 would be derived from residential customers which
9 have traditionally had much more stable and less --
10 their sales are far less sensitive to economic
11 activity and recessions.

12 And I'd also elaborate that the -- if
13 their request to have a much higher customer charge
14 is, indeed, granted, that that's another reduction
15 in risk.

16 And I also think I pointed out that the
17 fact that ComEd is still a sizeable company,
18 suggests that it has less risks than some of the
19 smaller companies. I think Dr. Hadaway might have
20 used Mountain Power in Central, Vermont or
21 something like that. So there are additional
22 reasons.

1 **Q.** Yeah, I didn't ask you whether those were
2 the only ones. So we just spent a couple minutes
3 talking about something I didn't ask you.

4 **A.** All right.

5 **Q.** I asked you whether amongst the reasons
6 that you cited and, indeed, the reasons you
7 identified is important to discussed in some length
8 were operating risks, requirements for external
9 financing and construction requirements, right?

10 That's true isn't it?

11 **A.** I think the testimony you referred to said
12 among others. I elaborated.

13 **Q.** Right. Among others.

14 **A.** We can look up the testimony, so yes.

15 **Q.** Okay. It is true, is it not, that you have
16 conducted no study or analysis of the comparative
17 operating risk, need for external financing or
18 construction requirements for ComEd and any other
19 distribution utility, right?

20 **A.** I think that's how I answered your
21 questions.

22 **Q.** And its also true that you conducted no

1 such study with respect to operating risks, need
2 for external financing or construction requirements
3 of ComEd and any other integrated utility at all,
4 right?

5 **A.** I think I answered that data response you
6 gave me, and pointed out that my source for the
7 external financing discussion was Mr. Mitchell's
8 testimony.

9 **Q.** Actually you just said no.

10 **A.** Okay. I think on an earlier I discussed
11 that.

12 **Q.** What is the S&P business profile risk score
13 for ComEd?

14 **A.** I understand it to be 4.

15 **Q.** Do you know what the average is for
16 distribution, electric distribution utility?

17 **A.** I wouldn't be surprised if it's 3.

18 **Q.** Do you believe that legislative attempts to
19 freeze ComEd's rates will effect its business risks
20 in the eyes of its investors?

21 **A.** They could, but that won't.

22 **Q.** You wouldn't give me more than "could"?

1 **A.** That would, of course, be requirement for
2 this case because by the time you set rates in this
3 case either the rates will be frozen or they won't.

4 If rates get set in this case, that
5 event will not happen and the risks will be lower.

6 **Q.** On Lines 417 of 422 of your direct, you
7 testify: "If ComEd prevails in other aspects of
8 this case and in its auction case, the Company will
9 have less business risks than it has in its
10 integrated electric utility company during the
11 transition period."

12 Have I read your testimony correctly?

13 **A.** You did.

14 **Q.** Is it your client's view that ComEd should
15 prevail in this case and the auction case?

16 **A.** Absolutely not.

17 **Q.** Are you aware that the Attorney General has
18 appealed the order in the auction case?

19 **A.** I'm generally aware of that.

20 **Q.** Is it your client's view that the
21 Commission, in setting Commonwealth Edison's rates,
22 should treat that appeal as meritless?

1 **A.** I haven't discussed that with my client
2 with either of my three clients.

3 MR. JOLLY: To clarify, Mr. Bodmer is not
4 testifying on the --

5 MR. RIPPKE: I know. I didn't think I made that
6 assumption.

7 MR. JOLLY: Your first question asked if his
8 client's.

9 MR. RIPPKE: I understand. But then I asked
10 about the AG's appeal.

11 MR. JOLLY: Okay.

12 BY MR. RIPPKE:

13 **Q.** Is it your testimony, as an ROE expert
14 making a recommendation on a return for this
15 Commission, that in setting ComEd's rates, it
16 should treat attempts to attack the results in the
17 auction docket as meritless?

18 **A.** Absolutely not.

19 This, again, I'm not going to repeat my
20 answer. But it's irrelevant for the same reasons I
21 just gave in an earlier answer.

22 **Q.** All right. Now, are you aware of the fact

1 that S&P monitors regulatory developments as part
2 of the process by which it sets ratings for other
3 utilities in other companies?

4 **A.** I'm generally aware, yes.

5 **Q.** Do you know whether S&P yesterday issued a
6 rating report that commented on the status of
7 regulation in Illinois and potential challenges to
8 Company's right to recover procurement costs?

9 **A.** I have no idea.

10 **Q.** You didn't review that?

11 **A.** No.

12 **Q.** If it did, and if it had indicated that one
13 of the reasons why companies in Commonwealth
14 Edison's positions are risky relates to the risk of
15 rate cap extension or the inability to pass through
16 its procurement costs, would that have changed your
17 opinion?

18 **A.** I'd really have to have reviewed that
19 entire document.

20 **Q.** So the answer is you don't know whether it
21 would have changed your opinion or not?

22 **A.** I don't know.

1 **Q.** You recommend a considerably more leveraged
2 capital structure for ComEd than ComEd proposes; do
3 you not?

4 **A.** To be clear, on rebuttal I make the same
5 recommendation as the Staff, yes.

6 **Q.** You recommend a considerably more leveraged
7 capital structure than ComEd proposes whether on
8 direct or rebuttal, right?

9 **A.** That's correct.

10 **Q.** And would you agree, Mr. Bodmer, that if
11 the capital structure changes, the cost of equity
12 should also change?

13 **A.** In a very general sense, yes.

14 **Q.** You teach courses on this subject, and in
15 the course of teaching those courses, you present
16 slides to your students?

17 **A.** Yes.

18 **Q.** And you produced those slides to us in
19 response to a discovery request?

20 **A.** I did.

21 **Q.** And amongst the statements that you impart
22 to your students is just the statement that I read,

1 that quote, "If the capital structure changes, the
2 cost of equity should change." Is it not?

3 **A.** I think I just answered that that's
4 generally the case, yes.

5 **Q.** Isn't it true that you also teach your
6 students that if the capital structure changes, the
7 cost of equity should change to maintain the same
8 overall WACC?

9 **A.** I would have to look at the context.
10 That's -- I'm sure that there is a slide
11 on that. However, that context is from a
12 basic -- if you agree with the Modigliani and
13 Miller principle that, essentially, has no impact
14 on the rate of return.

15 **Q.** I'm not asking about Modigliani and Miller.
16 I'm asking about Ed Bodmer.

17 That's on your slide, right?

18 **A.** Which slide?

19 I mention in there that would be in the
20 context of the Modigliani and Miller theory.

21 MR. RIPPKE: I apologize, your Honor.

22 I didn't expect necessarily having to do

1 this, but with your permission, I'm going to ask to
2 mark that segment of Mr. Bodmer's slides as ComEd
3 Cross-Exhibit No. 7.

4 And with your permission, I will provide
5 the requisite number of copies later this
6 afternoon.

7 JUDGE DOLAN: That's fine.

8 (Whereupon, ComEd Cross Deposition Exhibit No. 7
9 was marked for identification.)

10 BY MR. RIPPIE:

11 Q. Last set of questions.

12 Mr. Fosco asked you about a table that
13 appears on Page 24 of your Exhibit No. 1. I
14 believe it begins on Line 695.

15 A. Yes.

16 Q. I'm very specifically going to ask you
17 about the merger transaction only, not any
18 subsequent transfer of assets.

19 As a result of the merger only; i.e.,
20 the second after the merger closed, ComEd's equity
21 did not change by the full amount of the Goodwill,
22 did it?

1 **A.** At that time ComEd owned nuclear power
2 plants which were written off.

3 So I'm sorry. I have to elaborate on
4 that. So the equity did not change because there
5 was a write-down of the nuclear power plants.

6 **Q.** And the equity changed in fact by a little
7 over 2.2 billion, right?

8 **A.** I'll certainly accept that.

9 There was Goodwill that was that
10 increased. Then the net value of the nuclear
11 plants went down. To give you the net number --

12 **Q.** I understand that your explaining your
13 answer. And I understand the custom here.

14 But because it is important to scope
15 issues, I want it to be clear that I'm only asking
16 you about the merger transaction.

17 And the answer to my question is about
18 2.2 billion, right?

19 **A.** Yes.

20 MR. RIPPKE: Thank you.

21 That's all I have.

22 Your Honors, I would ask that Exhibit 6

1 and soon to be 7 be admitted.

2 JUDGE DOLAN: Any objection?

3 MR. JOLLY: With the understanding as to
4 Exhibit 6, that it's done for cross-examination
5 purposes for potential impeachment of Mr. Bodmer's
6 testimony and not his substantive attachment to
7 Mr. Hadaway's testimony, which was stricken, we
8 have no objection.

9 And I have no objection to 7 either.

10 MR. RIPPKE: It is being offered for the purpose
11 of impeaching his testimony.

12 JUDGE DOLAN: So noted.

13 ComEd Cross-Exhibit No. 6 and ComEd
14 Cross-Exhibit No. 7 will be admitted into evidence.
15 (Whereupon, ComEd Cross Exhibit Nos. 6 and 7 were
16 admitted into the record.)

17 MR. JOLLY: Can we have 10, 15 minutes?

18 JUDGE DOLAN: Certainly.

19 We will take a break.

20 (Whereupon, a recess was taken.)

21 JUDGE DOLAN: Mr. Jolly?

22

1 REDIRECT EXAMINATION

2 BY

3 MR. JOLLY:

4 Q. Mr. Bodmer, Mr. Rippie asked you several
5 questions regarding Commission decisions that
6 occurred around the time of various mergers.

7 Why do you think it's important in this
8 case for the Commission to use the information
9 concerning the PECO ComEd merger?

10 A. I'm sorry?

11 Q. The PECO Unicom merger?

12 MR. ROBERTSON: Can you speak up, Mr. Jolly?

13 BY MR. JOLLY:

14 Q. I'll get it right this time.

15 Mr. Rippie asked you several questions
16 regarding Commission decisions that occurred around
17 various mergers.

18 Why do you think it's important in this
19 case that the Commission use information available
20 regarding the PSEG Unicom merger?

21 MR. RIPPIE: Exelon merger.

22 MR. JOLLY: Unicom. Thank you.

1 THE WITNESS: You know, as the beautiful chart
2 up there presented by ComEd, shows my number is
3 certainly lower than 19 orders at 10.5 lower than
4 the Nicor case and lower than the other cases. We
5 know that. I know that.

6 I also know that in the industry,
7 market-to-book ratios have consistently been
8 substantially -- they've been above 1, and they're
9 certainly above 1 at this point in time.

10 So we have this fact that market-to-book
11 ratios that are above 1 are evidence that returns
12 being granted exceed the cost of capital, and the
13 kind of Commissions are still granting the same
14 sort of levels of return.

15 Now, I thought it was essential in
16 addressing this issue to look past the sort of
17 discussion that typically goes on surrounding costs
18 of capital decisions.

19 If I would put myself in the shoes of
20 somebody who had to make a decision on these cases
21 and address things like mean, or a version of
22 EBITDA, whether basing of adjustments should be

1 measured in EBITDA, which analyst growth rates to
2 look at.

3 This sort of thing is extraordinarily
4 difficult to get through and to try to really get a
5 grasp on.

6 So I thought it was really, in terms of
7 the process, such valuable information to have
8 direct representations of what investment banks,
9 who did not have a stake in this case, thought the
10 cost of capital was.

11 **Q.** In response to one of Mr. Rippie's
12 questions, you stated that you are familiar with
13 how investment banks respond to clients.

14 What did you mean by that statement?

15 **A.** Well, certainly in my experience when we
16 would receive a request from a client, we made
17 every attempt to satisfy that request and to please
18 the clients.

19 Investment banking is a very, very
20 competitive business. And ComEd and Exelon are
21 very important clients. I'm sure paying millions
22 of dollars.

1 You can't differentiate money. The
2 investment bank is providing underwriting. It's a
3 very tough thing to differentiate.

4 So if you could provide assistance to
5 them and get a leg up on the competition, that's
6 very important and there is certainly a strong
7 desire to do that.

8 **Q.** Mr. Rippies also asked you questions
9 regarding the differences between valuations that
10 investment banks do and how they determine cost of
11 equity versus how regulatory bodies determine cost
12 of equity.

13 Could you please explain what those
14 differences are.

15 **A.** Well, on the cost of equity there are none.

16 The cost of equity is the opportunity
17 cost of investments with similar risks. That's the
18 same valuation. That's the same relative
19 valuation. It's the same absolute valuation of an
20 acquisition as opposed to relative valuation. And
21 it's the same number that we're looking for in this
22 case to set as the basis for return on equity.

1 **Q.** Mr. Rippie also asked you a question about
2 whether investment banks use company-specific data.

3 You disagreed with that, with his
4 statement. Can you explain why you disagreed.

5 **A.** Well, I've seen a number of presentations
6 of cost of equity and cost of capital that
7 investment banks present. They, typically, use
8 market data.

9 In fact, I think I put in my testimony
10 that Morgan Stanley said that it uses market data.
11 They apply that market data to the free cash flow,
12 which is different than applying the data to the
13 rate base. But, certainly, in all of the
14 presentations I've seen the basis is market data.

15 **Q.** You also, with respect to ComEd
16 cross-Exhibit 6, the Lehman Brothers' letter, you
17 said that the last paragraph which appears on Page
18 3, was the most important portion of the letter.

19 Can you explain why you believe that to
20 be true.

21 **A.** Yes.

22 Well, we have looked and found that

1 J.P. Morgan, Morgan Stanley, and Lehman Brothers
2 all use costs of weighted-average cost of capital
3 between 5 and somewhere above 6 percent.

4 But we have struggled through the course
5 of this case to find out what the return on equity
6 number is behind those costs.

7 And that's the number we really need.
8 And that's the same number that I just referred to
9 in the prior testimony.

10 Now, I try to derive that number. And I
11 came up with 7.75. Dr. Hadaway disputed my
12 computation, and came up with 11.45 as the number.

13 Finally, we have some sort of
14 representation in this number of what the
15 investment banks use.

16 Now, they didn't lay it out. But
17 presumably, they're using ComEd's 11 percent
18 request and subtracting 300 basis points or
19 3 percent to get to 8 percent, which is a little
20 bit higher than 7.75, but that's what this
21 paragraph seems to refer to.

22 Q. Mr. Rippie also asked you a question

1 regarding whether you were suggesting that ComEd
2 withheld information concerning the investment
3 bank's derived cost of equities.

4 Is that what you were suggesting?

5 **A.** I'm not suggesting that they withheld
6 information. I'm noting that they had
7 communication with Lehman Brothers which means
8 they, in all probability, also had communication
9 with J.P. Morgan and, quite possibly, had
10 communication with Morgan Stanley.

11 In the course of that communication,
12 there are two incredibly obvious questions that
13 arise. Given that we asked this repeatedly in data
14 requests and really struggled to try to find this
15 answer, did ComEd ask the number -- ask for the
16 number? And if they asked for the number, did
17 Lehman Brothers provide it?

18 It just would be shocking to me to think
19 that Lehman Brothers could have produced this
20 letter and would have refused to provide that
21 backup.

22 MR. JOLLY: I have nothing further.

1 MR. RIPPIE: Your Honor, I move to strike all of
2 the last answer after he didn't mean that ComEd was
3 withholding information.

4 While that might be argument that could
5 be made in a brief, this witness is testifying
6 under oath and he's supposed to be testifying based
7 on personal knowledge.

8 He has no knowledge whether anyone at
9 ComEd talked to Morgan Stanley or J.P. Morgan, let
10 alone what was said during that conversation.

11 And if the City and others care to make
12 that argument in their briefs, they may. But it is
13 not the proper subject of testimony.

14 MR. JOLLY: I think Mr. Bodmer is testifying
15 based on his experience and just stating that he
16 believes that if ComEd was having conversations
17 with Lehman Brothers, that he finds it surprising
18 they would not have asked that question.

19 I'm not certain that's inappropriate
20 testimony. I don't understand how it's
21 inappropriate.

22 JUDGE HALOULOS: It's entirely too speculative.

1 It will be stricken.

2 MR. JOLLY: Okay.

3 MR. RIPPKE: Can I just have 1 minute?

4 JUDGE DOLAN: Certainly.

5 RECROSS- EXAMINATION

6 BY

7 MR. RIPPKE:

8 **Q.** Mr. Bodmer, I believe I have about four
9 questions.

10 You indicated in response to, I believe
11 the second line of redirect questioning from
12 Mr. Jolly, an acknowledgment that your position is
13 sustained from the positions and the results
14 achieved by other utilities and ordered by other
15 Commissions around the country?

16 **A.** Yes, I did.

17 **Q.** Would you agree with me that market
18 expectations as to the value of both equity and
19 debt securities have been shaped by that history of
20 decision-making by other Commissions?

21 **A.** Not the cost of capital, but market
22 expectations as to earnings.

1 **Q.** And that in turn --

2 **A.** But absolutely not the cost of capital.

3 **Q.** The expectation concerning earnings would

4 in turn effect stock prices and debt prices, right?

5 **A.** The cost of capital.

6 You have to go back to the CAPM. We are

7 not backing out the cost of capital. The cost of

8 capital is a function of the risk-free rate plus

9 some measure of diversified risk that's driven

10 relatively by cash flows.

11 Your discussion about earnings and stock

12 prices are simply means by which to get at the cost

13 of capital.

14 **Q.** Can you answer my question please.

15 **A.** I think I answered no.

16 **Q.** So your answer is, to be clear, that

17 consistently you may say it's over earning. I

18 might disagree with you.

19 But that consistent higher earnings do

20 not increase stock prices?

21 **A.** No, I said they don't effect the cost of

22 capital.

1 Q. I asked you about stock and prices?

2 A. Well, of course they would increase the
3 stock price.

4 Q. Thanks.

5 MR. RIPPPIE: That's all I have.

6 Thanks.

7 (Whereupon, a recess was taken.)

8 JUDGE DOLAN: Before we begin with your witness,
9 since this is our first exposure to panel testimony
10 and it's going to be difficult to determine who's
11 sponsoring what part of the time. If there is no
12 objection from the parties, we would like to hear
13 the testimony and then admit the exhibits at the
14 end.

15 Is that a problem with anybody? I mean,
16 that way we rather than having them go through who
17 sponsored what testimony, I think we can speed
18 things along that way.

19 MR. ROONEY: Certainly.

20 MR. NEILAN: Certainly.

21 JUDGE DOLAN: Is that acceptable to the parties?

22 MR. ROONEY: Would you like me to identify the

1 pieces now then move for admission at the end?

2 JUDGE DOLAN: Yes.

3 MR. ROONEY: I'll introduce the witnesses, your
4 Honor.

5 JUDGE DOLAN: Okay.

6 MR. ROONEY: First to make an appearance, John
7 Rooney and Michael Guerra on behalf of Commonwealth
8 Edison Company.

9 Good morning, your Honors. I'm John
10 Rooney. And presenting the direct, rebuttal and
11 surrebuttal panel testimony of Mr. Larry S. Alongi
12 and Timothy F. McInerney.

13 And they have, consistent with the
14 protocol that's been established for identifying
15 testimony, the direct testimony is identified as
16 Exhibit 10.0. Attached to Exhibit 10.0 are
17 Exhibits 10.1 through 10.30.

18 The rebuttal testimony of Mr. Alongi and
19 Mr. McInerney is identified as ComEd Exhibit 24.0.
20 And attached thereto are Exhibits
21 24.1 through 24.10.

22 And, finally, in the surrebuttal

1 testimony that surrebuttal panel testimony has been
2 identified as ComEd Exhibit 41.0. And attached
3 thereto are Exhibits 41.1 through 41.9.

4 I would note for the record, that we've
5 also filed with regard to surrebuttal testimony
6 only a public and a confidential version reflecting
7 certain redactions that were made by virtue of the
8 use of certain confidential information and
9 surrebuttal testimony.

10 JUDGE DOLAN: All right.

11 Thank you, Mr. Rooney.

12 Gentlemen, will you please raise your
13 right hand.

14 Counsel, ready?

15 (Witnesses sworn.)

16 LARRY S. ALONGI AND TIMOTHY F. MCINERNEY,
17 called as a witnesses herein, having been first
18 duly sworn, was examined and testified as follows:

19 CROSS EXAMINATION

20 BY

21 MS. PUSEMP:

22 Q. Paul Neilan and Christina Pusemp for

1 Building Owners Managers Association of Chicago.

2 Good morning. My name is Christina
3 Pusemp. As I just said, I represent the Building
4 Owners and Managers Association of Chicago in this
5 proceeding.

6 I just have a few questions
7 regarding -- I would like to begin by directing
8 your attention to ComEd Exhibit 10.1. ComEd's
9 proposed tariff sheets, specifically ComEd's
10 proposed original sheet Nos. 468, Rider resale.

11 Let me know when you're there.

12 ComEd has proposed the Rider resale will
13 replace ComEd's current Rider 12; is that correct?

14 WITNESS ALONGI: Right.

15 Q. Okay. And the current Rider 12 and
16 proposed Rider resale set forth the terms and
17 conditions under which a resale customer who
18 purchases electricity from ComEd may then resell it
19 to a third person; is that correct?

20 WITNESS ALONGI: That's correct.

21 JUDGE DOLAN: Sir, you are going to need to
22 speak into the microphone also.

1 WITNESS ALONGI: Okay.

2 JUDGE DOLAN: Bring it in closer.

3 BY MS. PUSEMP:

4 Q. And do both the current Rider 12 and the
5 proposed Rider resale limit the eligibility for
6 ComEd resale customers to resell electricity to
7 those customers who have been doing so continuously
8 since 1997?

9 WITNESS ALONGI: The actual limitations are in
10 the general terms and conditions, but the same
11 limitations apply.

12 Q. And these third persons that the
13 electricity is being sold to, are they generally
14 tenants of the retail customer building?

15 WITNESS ALONGI:

16 A. Could you repeat that. I'm sorry.

17 Q. Sure.

18 These third persons that the electricity
19 is being resold to, are they tenants of the retail
20 customer building?

21 A. Yes.

22 Q. And did BOMA witnesses Childress and

1 Brookover, in their direct testimony, propose
2 specific language modifications to ComEd's proposed
3 Rider resale?

4 WITNESS ALONGI: Yes, they did.

5 Q. And in your rebuttal testimony, did you
6 agree to adopt this modified language?

7 WITNESS ALONGI: We agreed subject to the
8 Commission's approval.

9 Q. Okay. Did BOMA's language change anything
10 regarding the eligibility of ComEd's customers who
11 continuously resold electricity since 1957? Did
12 they change any part of that provision?

13 WITNESS ALONGI: No.

14 Q. Have you also -- have you had a chance to
15 review the rebuttal testimony of IIC witness,
16 Robert Stevens and rebuttal panel testimony of
17 Phillip O'Connor and John Domagalski of CES?

18 WITNESS ALONGI: Yes.

19 Q. And have you reviewed the portions
20 considering Rider Resale?

21 WITNESS ALONGI: Yes.

22 Q. Have those parties also agreed that BOMA's

1 language, modifications throughout the resale
2 adequately address the concerns and support the
3 adoption of that language?

4 WITNESS ALONGI: Yes, they have.

5 Q. And would you also agree that the language
6 proposed by BOMA best accomplishing the objective
7 of allowing retail customers who are currently are
8 allowed to resell electricity to third persons
9 under Rider 12 to do so post-2006?

10 WITNESS ALONGI: I would agree with that.

11 Q. Just one last question.

12 Have these resellers who have been
13 reselling under Rider 12 been required to obtain
14 certification as alternative retail electricity
15 suppliers?

16 WITNESS ALONGI: No.

17 MS. PUSEMP: Thank you.

18 That's all the questions I have.

19 JUDGE DOLAN: Mr. Neilan, are you asking
20 questions too?

21 MR. NEILAN: No, those are all the questions
22 that BOMA has.

1 JUDGE DOLAN: All right.

2 Sean, are you ready?

3 MR. BRADY: Sure.

4 CROSS EXAMINATION

5 BY

6 MR. BRADY:

7 Q. Good morning. My name is Sean Brady. And
8 I represent the Staff of the Illinois Commerce
9 Commission.

10 I would like to ask you a few questions
11 about Rider 8.

12 Is it fair to say that Rider 8 provides
13 a credit to customers who receive electricity
14 through transformers they own or transformers that
15 they lease from ComEd?

16 WITNESS ALONGI: That's correct.

17 If I may just add to that, they must own
18 some of the transformers.

19 Q. I was going to ask for a clarification on
20 that.

21 So it looks -- are there three groups
22 then of customers who would be under Rider 8

1 owners, who lease -- customers who own a
2 transformer, customers who lease a transformer from
3 ComEd, and customers who have a combination of
4 owned and leased transformers?

5 WITNESS ALONGI: It does not include customers
6 that only lease from ComEd.

7 JUDGE DOLAN: Could you please keep your voice
8 up please.

9 WITNESS ALONGI: I'll do my best.

10 BY MR. BRADY:

11 Q. Those customers who only lease transformers
12 from ComEd?

13 WITNESS ALONGI: Would the not be eligible for a
14 Rider 8 credit.

15 Q. What rider would they be under then?

16 WITNESS ALONGI: The current rider that would
17 apply is Rider 6. It's an option facilities rider.

18 Q. Thank you.

19 There seems to be a little confusion
20 between your testimony and Mr. Linkenback's
21 testimony about the number of customers under
22 Rider 8. So I just wanted to get that clarified.

1 Is there 225 customers taken under
2 Rider 8 currently?

3 WITNESS ALONGI: I think the count that we had
4 provided was about 225, yes.

5 Q. And of those 83 of them, 83 of the
6 customers both own and lease?

7 WITNESS ALONGI: Subject to check, yes.

8 I recall there was a number of 83 that,
9 I think you are correct, owned and leased.

10 Q. Do you guys have a term for people,
11 customers who both own and lease that we can use
12 here so we don't create confusion on the record?

13 WITNESS ALONGI: No, we don't have a term for
14 that.

15 Q. Can we just call them like a hybrid?

16 WITNESS ALONGI: That would be fine.

17 Q. Thank you.

18 So just to be clear there are 8 -- of
19 the 200 customers, 83 of them are hybrid
20 approximately?

21 WITNESS ALONGI: I could check the testimony,
22 but I believe that's correct.

1 Q. That's all right. That's fine.

2 How long has this rider been in

3 existence?

4 WITNESS ALONGI: For as long as I've been

5 around. And I've worked with ComEd for over

6 30 years. So it's at least that long.

7 Q. Do you know when it was last modified?

8 WITNESS ALONGI: Offhand, no.

9 Q. How long have you been involved in as a

10 witness in rate cases for ComEd?

11 WITNESS ALONGI: I've been a witness in the last

12 three delivery service rate cases.

13 Q. So would that be?

14 WITNESS ALONGI: Since 1999.

15 Q. So 1999.

16 And it hasn't changed since then?

17 WITNESS ALONGI: Correct.

18 Q. Now, under the Rider 8, the customer's

19 required to maintain the equipment, correct?

20 WITNESS ALONGI: Correct.

21 Unless it's a hybrid and some of the

22 transformers are at least from ComEd. And then

1 ComEd maintains it under the Rider 6 rental.

2 Q. They maintain only the transformers that
3 are being leased? ComEd -- let me rephrase that so
4 we're clear.

5 ComEd does the maintenance on the
6 transformers that are leased from ComEd?

7 WITNESS ALONGI: That's correct.

8 They're ComEd transformers. They're
9 leased by the customer, and part of the rental
10 includes maintenance.

11 Q. Okay. The customer is still responsible
12 for the maintenance on those transformers that it
13 owns?

14 WITNESS ALONGI: Yes.

15 Q. Thank you.

16 Now, under this rider, there is a
17 credit, correct?

18 WITNESS ALONGI: Yes, Rider 8 there is a credit.

19 Q. What is that credit supposed to be
20 compensating the customer for?

21 WITNESS ALONGI: For the cost of the
22 transformer, and although, I was not part of the

1 development of the credit, I assume it also
2 includes the customer's maintenance on the
3 transformer.

4 Q. What types of customers use this rider?

5 WITNESS ALONGI: Probably at least half of them
6 are industrial manufacturing customers. Some of
7 them are customers that own generation. I think
8 there's some hospitals, park districts.

9 Those are the customers that come to
10 mind.

11 Q. I'm sorry. I missed that last part. It
12 was it the customers?

13 WITNESS ALONGI: Those are the customers that
14 come to mind.

15 Q. Okay. Thank you.

16 WITNESS ALONGI: I did review a list of
17 customers on the riders. Those are the types.

18 Q. Thank you.

19 Now, in your proposal regarding Rider 8
20 or ComEd's proposal regarding Rider 8 is to
21 discontinue Rider 8; is that correct?

22 WITNESS ALONGI: That's correct.

1 Q. And it's my understanding from your
2 surrebuttal testimony that you reference back --
3 your proposal in your rebuttal testimony which says
4 that ComEd is willing to give each Rider 8 customer
5 a one-time payment which is equal to one year of
6 credit so as to end the Rider 8?

7 WITNESS ALONGI: That's correct.

8 Q. In your plan for implementing the
9 discontinuations of Rider 8, the customer then
10 would move to Rider NS, correct?

11 WITNESS ALONGI: That's correct.

12 Q. And just so we're clear, Rider NS is a
13 rider for customers who have nonstandard services
14 and facilities?

15 WITNESS ALONGI: That's correct.

16 Q. Would there be other customers taking up
17 Rider NS besides customers from Rider 8?

18 WITNESS ALONGI: Yes.

19 Currently customers that take all
20 transformers from ComEd are allowed a single
21 transformer as standard.

22 And if they request service at multiple

1 locations, and it requires multiple transformers,
2 the difference in cost of the standard transformer
3 versus a multiple transformers is a rental item
4 that the customer would pay under the current
5 Rider 6 and going forward would pay under the
6 proposed Rider NS.

7 Q. Okay. Thank you.

8 Do you have an idea off -- because you
9 also address Rider NS in your testimony, correct?

10 WITNESS ALONGI: Yes.

11 Q. Has ComEd estimated how many customers
12 would be moving to Rider NS if that is approved?

13 WITNESS ALONGI: We have billing determinants on
14 how many customers are currently served on Rider 6.
15 And those customers would move to Rider NS.

16 And if the Commission approved the
17 discontinuation of Rider 8, those customers would
18 also move to Rider NS.

19 Q. I guess I was looking for just a number.

20 Do you have an idea of that number, just
21 an estimate?

22 WITNESS MCINERNEY: It would be the hybrid

1 customers that would then continue to have a rental
2 under Rider NS.

3 Q. I was just looking for the total number of
4 Rider NS customers?

5 WITNESS ALONGI: Could I confer?

6 WITNESS MCINERNEY: I don't have the number
7 offhand. It is in Part 285.

8 BY MR. BRADY:

9 Q. All right. Going back to Rider 8. And if
10 Rider 8 is terminated, what will happen to the
11 transformers that the companies own?

12 WITNESS ALONGI: They'll remain in place and
13 continue to be rented by the customer.

14 Q. Will they be -- will some of them be taken
15 out of service?

16 WITNESS ALONGI: Not unless the customer asks
17 ComEd to do that.

18 Q. ComEd will -- will ComEd be inspecting
19 these transformers to evaluate their ability to
20 continue functioning?

21 WITNESS ALONGI: I'm not familiar with ComEd's
22 transformer inspection practices, so I couldn't

1 answer that question.

2 (Whereupon, there was a change
3 of reporters.)

4 And then the trans- -- the transformers, over time,
5 would be taken out of -- would be replaced as they
6 normally were; is that your understanding, or is
7 that also outside of you're --

8 WITNESS ALONGI: From my experience,
9 transformers are replaced either when they fail, or
10 when a customer requests to add a load to the
11 transformer, and the transformer size needs to be
12 upgraded.

13 Q. Okay. And then under Rider NS, the
14 customer who formerly owned the transformer, would
15 no longer be maintaining that transformer, correct?

16 WITNESS ALONGI: No, just to be clear, what
17 we've been discussing are the ComEd transformers
18 for the hybrid customer.

19 Q. Okay.

20 WITNESS ALONGI: And the hybrid customer that
21 owns some of the transformers, but not all, would
22 continue to own and maintain their own

1 transformers.

2 Q. And then what about the customers who only
3 own those -- let me start that over.

4 What about those customers on Rider 8
5 who only own their own transformers?

6 WITNESS ALONGI: They would continue to own
7 their own transformers. We would allow a standard
8 allowance if the customer wanted ComEd to provide
9 transformation. Basically, we would offer to
10 provide our standard service. The customer could
11 remove their transformer, ComEd could install the
12 standard transformer.

13 Q. Neither Rider NS nor Rider 8 establishes
14 the rate that the customer has to pay; isn't that
15 correct?

16 MR. ROONEY: The rate for what?

17 MR. BRADY: The rate the customer has to pay to
18 ComEd.

19 WITNESS ALONGI: For delivery services?

20 BY MR. BRADY:

21 Q. For delivery services.

22 WITNESS ALONGI: It doesn't establish the rate

1 under our proposed rate RDS, but there is a charge
2 for optional transformers that the customer is
3 renting from ComEd.

4 Q. Okay. All I wanted to do was clarify that
5 the rates for these customers, the delivery rates,
6 weren't included in either the two tariffs -- the
7 rider or the tariff we're talking about here,
8 either rider. We're talking about Rider 6 or Rider
9 8 or NS?

10 WITNESS ALONGI: Rider 6 and Rider NS are riders
11 to the rate and it does not change the rate.

12 Q. Now, you also -- is -- is it your
13 understanding that ComEd has computer programming
14 software that is needed to track these Rider 8
15 customers?

16 WITNESS ALONGI: Our billing system currently
17 tracks the Rider 8 customers. It's a field in the
18 billing system. The system is computer software.

19 Q. Is it a significant remove -- let me start
20 over on that question.

21 By ending Rider 8, is there a
22 significant savings to ComEd regarding -- for the

1 computer programming and maintenance and ability
2 compunction function that you just mentioned?

3 WITNESS ALONGI: There would be savings in terms
4 of not needing to program that for post-'06 as well
5 as maintenance on the computer system and the
6 testing that is performed on the computer system
7 when rates are changed. So there would be savings.

8 Q. And there is -- regarding Rider NS, there
9 is also a program -- that's also maintained or
10 tracked in billing using a computer program as
11 well, correct?

12 WITNESS ALONGI: That's correct.

13 Q. And that would also have to be installed
14 and maintained, correct?

15 WITNESS ALONGI: That's correct.

16 Q. And Rider NS is a new proposal in this rate
17 case, correct?

18 WITNESS ALONGI: It's a replacement of our
19 Rider 6, the optional facility rider that we
20 currently have.

21 Q. You also discussed an alternative to your
22 preferred option; is that correct? Is that a fair

1 characterization of your testimony?

2 WITNESS ALONGI: The alternative was the
3 alternative that you mentioned earlier to provide a
4 one-year payment to all Rider 8 customers.

5 Q. No, the alternative that I had in mind is
6 in your surrebuttal testimony on Page -- give me a
7 second here. I believe it's on either 18 or 19.

8 WITNESS ALONGI: I think the surrebuttal
9 proposal was to simply limit availability to those
10 customers that currently are taking service under
11 Rider 8, and allow ComEd to make an adjustment to
12 its rate design spreadsheet to properly recover our
13 revenue requirements taking those credits into
14 account.

15 Q. So I guess I'll refer to that as an
16 alternative to your first proposal or your original
17 offer as you had been -- you referred to it here in
18 your surrebuttal testimony, which was to
19 discontinue?

20 WITNESS ALONGI: Yes.

21 Q. So I may have missed it, when you discussed
22 your alternative, your alternative also continues

1 to provide a credit to the current customers,
2 correct?

3 WITNESS ALONGI: That's correct.

4 Q. And as you mentioned, there is a change to
5 their rate -- to the customers' rates, correct?

6 WITNESS ALONGI: The change that I was
7 mentioning was a change to our rate design
8 spreadsheet, it sets the delivery service rates to
9 account for the credit because we had not accounted
10 for it yet in the original rate design spreadsheet.

11 Q. So what you're saying is, you hadn't
12 accounted for that credit in the previous delivery
13 service case -- the delivery service rate case?

14 WITNESS ALONGI: No. No, because we had
15 proposed to discontinue Rider 8, we did not account
16 for continued Rider 8 credits in our rate design
17 spreadsheet.

18 Q. I see. So you would update the -- what
19 you're saying is you would update what you have
20 currently placed -- filed with the Commission to
21 account for this credit?

22 WITNESS ALONGI: That's correct.

1 Q. But the current customers, based on -- the
2 current Rider 8 customers, based on the rate
3 proposal -- the delivery service rate proposal
4 ComEd has in this docket, their rates are changing,
5 correct?

6 MR. ROONEY: Are you speaking about the delivery
7 service rate, or the credit from NS? Sean, I just
8 want to make sure we're clear.

9 MR. BRADY: Yeah, I'll rephrase that.

10 BY MR. BRADY:

11 Q. The customers under Rider 8, their rates
12 are changing if the Commission were to adopt a
13 revenue requirement other than what was approved at
14 01-0423?

15 WITNESS ALONGI: The delivery service rates are
16 a proposal change, yes, for all customers.

17 Q. Now, both of you are rate specialists,
18 correct -- or you're in rates, you're the manager
19 of rates, Mr. Alongi?

20 And you're a rates specialist, correct,
21 Mr. McInerney?

22 WITNESS MCINERNEY: That's correct.

1 Q. All right. And is it your understanding
2 that revenue requirement is a factor of determining
3 rates?

4 WITNESS ALONGI: Yes.

5 Q. And is it your understanding that inflation
6 impacts revenues?

7 MR. ROONEY: Objection. Your Honor, these
8 witnesses don't talk about the specifics of the
9 revenue requirements. They speak about the
10 implementation of tariffs based upon the revenue
11 requirement that ComEd is proposing. They're not
12 talking about inflation or anything that would
13 impact revenue requirement.

14 MR. BRADY: But as they've already established,
15 they are rate specialists, so they should at least
16 have a common -- a general understanding of how
17 rate's performed and whether it's impacted by
18 inflation or not.

19 JUDGE DOLAN: I'll overrule it. Just based --

20 If you can answer it, answer it, please.

21 WITNESS ALONGI: ComEd's costs, which establish
22 the revenue requirement, would be affected by

1 inflation.

2 BY MR. BRADY:

3 Q. Did you have -- did you have an opportunity
4 to review -- well, are you familiar with Jerry
5 Hill?

6 WITNESS ALONGI: Yes.

7 Q. And would you have any opportunity to have
8 reviewed his testimony?

9 WITNESS ALONGI: I did not review Jerry Hill's
10 testimony in great detail, no.

11 Q. Would it surprise you if he had made a
12 statement that the consumer price index had
13 increased 9.7 percent from 2000 to 2004?

14 MR. ROONEY: Objection, relevance. Mr. Hill's
15 testimony goes directly to what my prior objection
16 was talking about, your Honor, which was revenue
17 requirement.

18 These gentlemen are here to discuss the
19 rates, and particularly, this line of questioning
20 involving Rate 8. And how the revenue requirement
21 gets established is entirely a different matter
22 than the establishment of the rates.

1 JUDGE DOLAN: We'll sustain the objection.

2 BY MR. BRADY:

3 Q. Previous -- a few questions ago, prior to
4 this most recent line of questioning, you had
5 stated that it's your understanding that the
6 customers -- the Rider 8 customers' rates would
7 change, correct?

8 WITNESS ALONGI: Correct.

9 Q. However, your alternative proposal,
10 proposes to not change the credit in Rider 8,
11 correct?

12 WITNESS ALONGI: That's correct.

13 Q. If Rider 8 is eliminated, will any Rider 8
14 customer whose service is provided through
15 accomodation -- whose service is a hybrid, will
16 their monthly ComEd bill increase?

17 MR. ROONEY: Object. I just want to make sure
18 we're clear, Sean -- maybe I'll withdraw the
19 objection -- but I want to make sure we're talking
20 -- there's different rates, there's RCDS. Are you
21 asking about overall bill? Are you asking about a
22 rate relative to NS versus Rider 8?

1 I just want to make sure we're talking
2 about the right rate when you're asking the
3 question.

4 MR. BRADY: I'm talking about their overall
5 bill.

6 BY MR. BRADY:

7 Q. If Rider 8 is eliminated, will any hybrid
8 Rider 8 customer see their monthly ComEd bill
9 increase?

10 WITNESS ALONGI: I really can't answer that
11 question on a total bill impact basis. What I can
12 say, is that all other things equal, just looking
13 at the Rider 8 versus Rider NS, it really depends
14 on a customer's load, how many customers -- how
15 many transformers the customer rents from ComEd.

16 We answered some data requests with
17 respect to the hybrid customers. Some of them
18 actually saw lower charges as a result. Some of
19 them would see slightly higher charges for the
20 transformers only, not talking about, you know, the
21 rate RDS charges.

22 Q. Would you have a different opinion

1 regarding the customers -- the Rider 8 customers
2 who own the transformer?

3 WITNESS ALONGI: If that customer shows to
4 continue owning the transformer, they would not
5 receive a credit, and, thereby, could be considered
6 to pay more.

7 MR. BRADY: That's all the questions I have.
8 Thank you.

9 JUDGE DOLAN: Thank you. I figure before lunch
10 we're going to try to get some of the shorter cross
11 out of the way, and then we'll come back for the
12 longer.

13 So Cook County State's Attorneys, are
14 they -- Mr. Jolly, you ready?

15 We do have a different court reporter,
16 so if you could just introduce yourself before we
17 begin, so she's aware of it.

18 MR. JOLLY: My name is Ron Jolly, I represent
19 the City of Chicago in this matter.

20

21

22

1 CROSS-EXAMINATION

2 BY

3 MR. JOLLY:

4 Q. Good afternoon, Mr. Alongi and
5 Mr. McInerney. Again, my name's Ron Jolly. I
6 represent the City of Chicago in this matter.

7 I'm just going to ask you about a couple
8 of topics; Rider LGC and Rider ML.

9 I'm going to start with Rider LGC.

10 Could you please describe for me what
11 Rider LGC is.

12 WITNESS ALONGI: Rider LGC is a rider that
13 allows ComEd to recover the cost of performing work
14 that it would not ordinarily perform when its
15 requested to do so by a local government unit.

16 Q. And isn't it true that on your proposed --
17 well, actually, Rider LGC is a proposed replacement
18 for an existing rider; isn't that correct?

19 WITNESS ALONGI: Correct. Rider LGC is a local
20 government compliance rider that replaces Rider 28.

21 Q. Or would replace, assuming it's approved?

22 WITNESS ALONGI: That would replace. Thank you.

1 Q. And the point of Rider 28 and the point of
2 Rider LGC is that if a local government unit asks
3 ComEd to perform what, I think, under the current
4 rider is sometimes defined as nonstandard service,
5 the incremental cost of nonstandard services are
6 charged back to the residents of the requesting
7 local government unit; is that accurate?

8 WITNESS ALONGI: To the ComEd customers that are
9 located in the local government units at a rate.

10 Q. Thank you. And could you please turn to
11 your rebuttal testimony on Page 15.

12 WITNESS ALONGI: Did you give a page number?

13 Q. 15, and at Lines 389 through 91.

14 And there's a sentence there that
15 states, The differences between ComEd's existing
16 Rider 28 and ComEd's proposed Rider LGC are not
17 substantive and are not intended to change the
18 purpose of the rider.

19 Did I read that accurately?

20 WITNESS ALONGI: Yes, you did.

21 Q. Could you turn to -- could you now turn to
22 Page 17, Lines 440 through 442.

1 WITNESS ALONGI: Yes.

2 Q. And there's a question that begins on Line
3 438 that says -- that states, Does ComEd intend to
4 administer Rider LGC any differently than Rider 28
5 is currently administered.

6 And your answer is, No. ComEd's
7 intention is to administer Rider LGC in the same
8 manner as Rider 28. And ComEd does not intend to
9 expand its discretion under Rider LGC as compared
10 to Rider 28.

11 Did I read that accurately?

12 WITNESS ALONGI: Yes.

13 Q. Could you now turn to your surrebuttal
14 testimony. And, particularly, at Page 8, Lines 188
15 through 190.

16 And, again, I think you make a similar
17 statement, but there's a sentence there that says,
18 Moreover, we have demonstrated in our rebuttal
19 panel testimony that the differences between
20 ComEd's existing Rider 28 and ComEd's proposed
21 Rider LGC are not substantive.

22 Did I read that accurately?

1 WITNESS ALONGI: Yes.

2 Q. Now, could you turn to Page 9 of your
3 surrebuttal testimony. And at Lines 207 through
4 209 and then at Lines 215 through 219, you quote --
5 in Lines 207 through 209, you quote a portion of
6 Rider 28; is that right?

7 WITNESS ALONGI: At 207 and 209, that is
8 correct.

9 Q. And then at Lines 215 through 219, you
10 quote a portion of proposed Rider LGC; is that
11 right?

12 WITNESS ALONGI: Correct.

13 Q. Now, as I understand, the quoted portion of
14 Rider 28 -- well, I'll just read it.

15 It says, In the event that a local
16 governmental -- governmental unit enacts the
17 ordinance or otherwise utilizes its constitutional
18 or statutory powers to compel the Company directly
19 or indirectly to, and then there are ellipses; is
20 that right?

21 WITNESS ALONGI: Yes.

22 Q. And does that enumerate the instances in

1 which ComEd would apply Rider 28?

2 WITNESS ALONGI: The text that follows is what
3 enumerates the conditions under which ComEd would
4 implement the Rider 28.

5 Q. Well, does that -- does that -- the quoted
6 text, does that indicate what actions a local
7 governmental unit would have to take before ComEd
8 would apply Rider 28?

9 WITNESS ALONGI: Yes.

10 Q. And so, it would require a local
11 governmental unit to enact an ordinance, or to
12 otherwise utilize its constitutional or statutory
13 powers; is that right?

14 WITNESS ALONGI: Right.

15 Q. Okay. Moving down to the quoted portion of
16 proposed Rider LGC, we have the same -- the same
17 actions a local government -- governmental unit
18 would have to take; is that right?

19 It states here in Line 215, An act would
20 require that a local government unit enact an
21 ordinance. And then if you skip down to Line 217,
22 Or otherwise -- well, beginning at the end of Line

1 216, Or otherwise utilizes its constitutional or
2 statutory powers to compel the Company directly or
3 indirectly to perform any combination of the
4 following.

5 Would you agree that those two portions
6 of proposed Rider LGC are -- are similar to or
7 intended to replicate proposed -- or --

8 WITNESS ALONGI: Yes.

9 Q. -- intended to replicate Rider 28?

10 WITNESS ALONGI: Yes.

11 Q. But between those two portions, there's a
12 new phrase; isn't that correct?

13 WITNESS ALONGI: That's correct.

14 Q. And that phrase states, Requires as a
15 condition of the company's use of its property.

16 Now, with respect to that phrase, would
17 a local government unit have to enact an ordinance,
18 or otherwise utilize its constitutional authority
19 for that phrase to become relevant?

20 WITNESS ALONGI: The example that we gave in
21 rebuttal, as I recall, was a situation in which
22 ComEd was required by the local government

1 authority to use a special service to prepare
2 permits, a computerated (sic) drafting service.
3 And that was a requirement for ComEd to get a
4 permit, so to speak, from that local government
5 unit to place poles or other facilities on the road
6 or right-of-way.

7 Q. So if the City of Chicago required ComEd to
8 receive a construction permit before doing work in
9 a city's right-of-way, are you saying the proposed
10 Rider LGC would flow the cost of acquiring that
11 permit through Rider LGC?

12 WITNESS ALONGI: Not unless there was some
13 unusual requirements of that permit, such as using
14 an outside vendor to prepare and categorize because
15 it's not done by ComEd in the normal instance.

16 Q. Okay. Would you agree that that's -- that
17 that phrase is an extension of the instances in
18 which ComEd -- strike that.

19 Would you agree that that phrase as to
20 the instances in which ComEd might apply what is
21 now Rider 28 and what will become Rider LGC?

22 WITNESS ALONGI: We described it as a

1 clarification.

2 Q. My guess is ComEd applied Rider 28 in the
3 circumstances that you described in your rebuttal
4 testimony?

5 WITNESS ALONGI: I don't have first-hand
6 knowledge, but I know it was brought to my
7 attention that that was a situation that should be
8 addressed.

9 Q. Do you know if ComEd applied Rider 28 in
10 that situation?

11 WITNESS ALONGI: No, I don't.

12 Q. Okay. Going to Page 10 of your surrebuttal
13 testimony, starting at Line 234, you respond to
14 City Witness Steve Walter's testimony regarding
15 Subsection D of Rider LGC; is that correct?

16 WITNESS ALONGI: Yes.

17 Q. And, in particular, you -- you quote
18 Subsection D, which states at Lines 235 to 237,
19 Remove existing facilities and replace them with
20 facilities that at a different time the Company
21 would otherwise be required to provide such
22 replacement; is that right?

1 WITNESS ALONGI: That's correct.

2 Q. Okay. And then as you go down in the lines
3 that follow, you describe -- in response to
4 Mr. Walter's testimony, you describe an instance
5 where Rider LGC would not apply; is that right?

6 WITNESS ALONGI: That's correct.

7 Q. And that sentence -- and that situation --
8 the example you use is this instance in which --
9 is -- during a public improvement project, such as
10 widening a street, if ComEd were required to move
11 its poles to accommodate the widening of a street,
12 assuming that overhead lines were replaced with
13 other overhead lines, those costs would not be
14 charged to the proposed Rider LGC; is that
15 accurate?

16 WITNESS ALONGI: That's correct.

17 Q. And carrying over to Page 11, you -- and
18 we're beginning at the bottom of Page 10, you
19 state, Under the provisions of existing Rider 28
20 and proposed Rider LGC, such a project is otherwise
21 required.

22 And otherwise required is in quotations.

1 Where exactly are you quoting that from?

2 WITNESS ALONGI: That was a quote from our
3 rebuttal testimony.

4 Q. Okay. Could you tell me where in your
5 rebuttal testimony?

6 WITNESS ALONGI: If the reference is correct, it
7 would be Page 16, Lines 417 and 422.

8 Q. Well, I'm at Page 16, Lines 421 through
9 422, and the words "otherwise required" appear
10 there and, again, it's in quotes.

11 Where is the citation to in your
12 rebuttal testimony?

13 WITNESS ALONGI: The quotes is not meant to be a
14 quotation, it's just meant to be a highlight.

15 Q. Okay. Okay. I'd like to move on to Rider
16 ML. And -- let's see. I'm going to go back to
17 your surrebuttal testimony.

18 MR. JOLLY: And at some point in my
19 cross-examination, I think I'm going to have to
20 refer to confidential information. When I get
21 there, I'll let the judges know.

22 JUDGE DOLAN: Thank you.

1 BY MR. JOLLY:

2 Q. In your discussion of Rider ML, at some
3 point you discuss salvage costs; is that correct?

4 I'm having a hard time locating the
5 precise point in your testimony.

6 Is that accurate, though?

7 WITNESS ALONGI: There was a discussion of
8 salvage costs.

9 Q. Right.

10 WITNESS ALONGI: Yes, there was a brief
11 discussion.

12 Q. Right. And when you talk about salvage
13 costs, what exactly do you mean?

14 Do you mean -- well, do you mean salvage
15 costs selling meters for junk purposes, or for
16 whatever, you know, value you get out of them? Or
17 do you mean -- it's actually in your rebuttal. I'm
18 sorry. And it's at Lines 475 and 477.

19 When you discuss a salvage value there,
20 are you discussing potential resale of meters that
21 ComEd no longer uses?

22 WITNESS ALONGI: Although I know you can get

1 salvage for certain metals as junk, I guess, but I
2 used it in the context of reselling the meters.

3 Q. Okay. If you could turn to Page 18 of your
4 surrebuttal testimony.

5 WITNESS ALONGI: Okay. Did you say
6 "surrebuttal"?

7 Q. I'm sorry, rebuttal. And there --
8 actually -- yeah, Page 18, and at the beginning --
9 at the top of that page through Lines 457, you talk
10 about ComEd's cost of meters; is that right?

11 WITNESS ALONGI: Correct.

12 Q. And this is where I'm going to go into --
13 I'm going to start asking questions about
14 confidential information.

15 JUDGE DOLAN: Okay. We are going to have to go
16 now into in camera. If anyone has not signed the
17 confidentiality agreement or are not a member of
18 this Commission, we'd ask that you please leave the
19 room.

20 (Whereupon, the following
21 proceedings were had in.
22 Camera.)